SUPREME COURT OF THE UNITED STATES.

No. 247.

THE CITY OF PHILADELPHIA, PLAINTIFF IN ERROR,

vs.

JOHN H. DIEHL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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a THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Pennsylvania, greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said circuit court before you, or some of you, between the city of Philadelphia, plaintiff, and John H. Diehl, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Roger B. Taney, chief justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-three.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

I hereby waive service of the within citation.
CHARLES GILPIER, *U. S. Att'y, for J. H. Diehl.*

1 In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit.

THE CITY OF PHILADELPHIA *vs.* JOHN H. DIEHL. } Certiorari to the district court of the city and county of Philadelphia, October sessions, 1863, No. 4.

1863, November 23. Petition filed; certiorari to the district court of the city and county of Philadelphia, exit.

November 25. Certiorari returned and filed.

December 1. F. Carroll Brewster, esq., appears for plaintiff.

December 10. Plea of non assumpsit filed.

December 10. George A. Coffey and J. Hubley Ashton, esqs., appear for the defendant.

December 18. Agreement to try filed.

December 31. And now, to wit, 31st December, 1863, a jury being called from the district court of the United States, in pursuance to an agreement filed December 18, 1863, come and are respectively sworn or affirmed as follows: John J. Meancy, William N. Battus, William Lee Shields, Daniel R. Bickley, Charles B. Rees, Benjamin Talley, Ethelbert A. Marshal, Benjamin Morton, William B. R. Selby, William Nolan, Marcus Cauffman, Henry Zell.

1864, January 6. And now, to wit, this sixth day of January, 1864,
2 the jurors aforesaid, on their oaths and affirmations aforesaid, do say that they find for the plaintiff, and assess the damages at twenty-eight thousand seven hundred and forty-two dollars and two cents, ($28,742 02,) with six cents costs.

January 6. Motion by defendant for new trial.

January 9. Reasons for new trial.

January 11. Reasons for new trial argued.

January 11. Rule made absolute; new trial granted.

October 3. And now, to wit, October 3, 1864, a jury being called come and are respectively sworn as follows: Thomas C. Jones, James Bain, James W. Martin, Benjamin Talley, Fairfax S. Morrell, Augustus Duborg, George W. Gampher, John Manderson, Edward C. Bonsall, William N. Bathurs, John Green, Robert McCulloch.

October 4. And now, to wit, October 4, 1864, the jurors aforesaid, on their oaths and affirmations aforesaid, do say that they find for the defendant.

October 10. Judgment for defendant.

3 UNITED STATES OF AMERICA, *Eastern District of Pennsylvania, sct:*

I, Benjamin Patton, clerk of the circuit court of the United States for the eastern district of Pennsylvania in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the docket entries in the above-entitled case.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this thirteenth day of December, A. D. 1864, and in the eighty-ninth year of the independence of the said United States.

[SEAL.] W. GRIER HIBLER, *pro Clerk C. C.*

4 In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit.

Pleas before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1863, No. 4. It is thus contained:

Be it remembered, that heretofore, to wit, on the twenty-third day of November, A. D. eighteen hundred and sixty-three, John H. Diehl, by his solicitors, George A. Coffey and J. Hubley Ashton, esquires, filed his petition for a writ of certiorari in the words and of the tenor following, to wit:

To the honorable the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit:

The petition of John H. Diehl, collector of internal revenue for the second collection district of the State of Pennsylvania, respectfully represents that a suit has been commenced by summons against him, as defendant, by the city of Philadelphia, as plaintiff, in the district court for the city and county of Philadelphia, in the State of Pennsylvania, to September term,
5 1863, No. 977½; that the said suit is brought on account of an act done by him under the revenue laws of the United States, as collector of internal revenue for the second collection district of the State of Pennsylvania, the suit being to recover a large sum of money paid for and on account of the said plaintiff to the said defendant, as collector aforesaid, as and for taxes and duties on certain gas manufactured by the plaintiff. He respectfully prays that the said cause may be entered on the docket of your honorable court, and proceeded in as a cause therein originally commenced, and that a writ of certiorari be immediately issued by the clerk of your honorable court to the district court aforesaid, to send to the circuit court of the United States in and for the eastern district of Pennsylvania the record and proceedings in the said cause, according to the provisions of the act of Congress in such case made and provided. And he will ever pray, &c.

JOHN H. DIEHL.

John H. Diehl, being duly sworn, says that the facts set forth in the above petition are true to the best of his knowledge and belief.

JOHN H. DIEHL.

Sworn and subscribed before me this twenty-first day of November, A. D. 1863. GEOR. PATCHEL, *Alderman.*

We certify that as counsel of the above petitioner we have examined the proceedings against him, and we believe the matters set forth in the above petition to be true.

6 GEO. A. COFFEY, *U. S Attorney.*
J. HUBLEY ASHTON, *Ass't U. S. Att'y.*

Whereupon, on the day and year aforesaid, a writ of certiorari to the district court of the said city and county is issued in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Eastern District of Pennsylvania, ss:*

The President of the United States of America to the honorable the judges of the district court for the city and county of Philadelphia, greeting:

Whereas lately, in the said district court for the said city and county of Philadelphia, John H. Diehl, collector of internal revenue for the second collection district of the State of Pennsylvania, was summoned to answer unto the city of Philadelphia in a plea of trespass upon the case, &c., which said plea, as it is said, is still pending before you in the said district court undetermined; and whereas, on the application of the said John H. Diehl to the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, on a suggestion supported by proper evidence that the said
7 suit is brought on account of an act done by him under the revenue laws of the United States, as collector as aforesaid, he prays that a writ of certiorari may be immediately issued by the clerk of the said circuit court of the United States to the said district court for the city and county of Philadelphia, to send to the said circuit court of the United States the records and proceedings in the said cause, according to the provisions of the act of Congress in such case made and provided:

Wherefore you are hereby commanded to transmit under your seal the record and proceedings of the said suit, with all things thereunto relating, unto the said circuit court of the United States, to be holden at Philadelphia for *for* the eastern district of Pennsylvania, in the third circuit, plainly and distinctly, in as full and as ample manner as it now remains before you, together with this writ, so that the said circuit court of the United States may be able therein to proceed and to do what shall appear of right ought to be done. Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this twenty-third day of November, A. D. 1863, and in the eighty-eighth year of the independence of the said United States.

[SEAL.] W. GRIER HIBLER,
pro Cl'k Circuit Court U. S., E. D. of Penn'a.

Afterwards, to wit, on the twenty-fifth day of November, A. D. 1863, a return is made to the said writ of certiorari in the words and of the tenor following, to wit:

8 In the district court for the city and county of Philadelphia.

Among other things it is thus contained of record, Sept. T., 1863, No. 977½:

THE CITY OF PHILADELPHIA
vs.
J. H. DIEHL.

Summons case ex. Oct. 31, 1863, ret. 1 Mon. Nov., 1863. Service accepted. Nov. 11, 1863, Narr. and rule to plead filed.

January 11. Rule made absolute; new trial granted.

October 3. And now, to wit, October 3, 1864, a jury being called come and are respectively sworn as follows: Thomas C. Jones, James Bain, James W. Martin, Benjamin Talley, Fairfax S. Morrell, Augustus Duborg, George W. Gampher, John Manderson, Edward C. Bonsall, William N. Bathurs, John Green, Robert McCulloch.

October 4. And now, to wit, October 4, 1864, the jurors aforesaid, on their oaths and affirmations aforesaid, do say that they find for the defendant.

October 10. Judgment for defendant.

3 UNITED STATES OF AMERICA, *Eastern District of Pennsylvania, sct:*

I, Benjamin Patton, clerk of the circuit court of the United States for the eastern district of Pennsylvania in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the docket entries in the above-entitled case.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this thirteenth day of December, A. D. 1864, and in the eighty-ninth year of the independence of the said United States.

[SEAL.] W. GRIER HIBLER, *pro Clerk C. C.*

4 In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit.

Pleas before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1863, No. 4. It is thus contained:

Be it remembered, that heretofore, to wit, on the twenty-third day of November, A. D. eighteen hundred and sixty-three, John H. Diehl, by his solicitors, George A. Coffey and J. Hubley Ashton, esquires, filed his petition for a writ of certiorari in the words and of the tenor following, to wit:

To the honorable the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit:

The petition of John H. Diehl, collector of internal revenue for the second collection district of the State of Pennsylvania, respectfully represents that a suit has been commenced by summons against him, as defendant, by the city of Philadelphia, as plaintiff, in the district court for the city and county of Philadelphia, in the State of Pennsylvania, to September term,
5 1863, No. 977½; that the said suit is brought on account of an act done by him under the revenue laws of the United States, as collector of internal revenue for the second collection district of the State of Pennsylvania, the suit being to recover a large sum of money paid for and on account of the said plaintiff to the said defendant, as collector aforesaid, as and for taxes and duties on certain gas manufactured by the plaintiff. He respectfully prays that the said cause may be entered on the docket of your honorable court, and proceeded in as a cause therein originally commenced, and that a writ of certiorari be immediately issued by the clerk of your honorable court to the district court aforesaid, to send to the circuit court of the United States in and for the eastern district of Pennsylvania the record and proceedings in the said cause, according to the provisions of the act of Congress in such case made and provided. And he will ever pray, &c.

JOHN H. DIEHL.

John H. Diehl, being duly sworn, says that the facts set forth in the above petition are true to the best of his knowledge and belief.

JOHN H. DIEHL.

Sworn and subscribed before me this twenty-first day of November, A. D. 1863. GEOR. PATCHEL, *Alderman.*

We certify that as counsel of the above petitioner we have examined the proceedings against him, and we believe the matters set forth in the above petition to be true.

6 GEO. A. COFFEY, *U. S Attorney.*
J. HUBLEY ASHTON, *Ass't U. S. Att'y.*

Whereupon, on the day and year aforesaid, a writ of certiorari to the district court of the said city and county is issued in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Eastern District of Pennsylvania, ss:*

The President of the United States of America to the honorable the judges of the district court for the city and county of Philadelphia, greeting:

Whereas lately, in the said district court for the said city and county of Philadelphia, John H. Diehl, collector of internal revenue for the second collection district of the State of Pennsylvania, was summoned to answer unto the city of Philadelphia in a plea of trespass upon the case, &c., which said plea, as it is said, is still pending before you in the said district court undetermined; and whereas, on the application of the said John H. Diehl to the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, on a suggestion supported by proper evidence that the said

7 suit is brought on account of an act done by him under the revenue laws of the United States, as collector as aforesaid, he prays that a writ of certiorari may be immediately issued by the clerk of the said circuit court of the United States to the said district court for the city and county of Philadelphia, to send to the said circuit court of the United States the records and proceedings in the said cause, according to the provisions of the act of Congress in such case made and provided:

Wherefore you are hereby commanded to transmit under your seal the record and proceedings of the said suit, with all things thereunto relating, unto the said circuit court of the United States, to be holden at Philadelphia for *for* the eastern district of Pennsylvania, in the third circuit, plainly and distinctly, in as full and as ample manner as it now remains before you, together with this writ, so that the said circuit court of the United States may be able therein to proceed and to do what shall appear of right ought to be done. Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this twenty-third day of November, A. D. 1863, and in the eighty-eighth year of the independence of the said United States.

[SEAL.] W. GRIER HIBLER,
pro Cl'k Circuit Court U. S., E. D. of Penn'a.

Afterwards, to wit, on the twenty-fifth day of November, A. D. 1863, a return is made to the said writ of certiorari in the words and of the tenor following, to wit:

8 In the district court for the city and county of Philadelphia.

Among other things it is thus contained of record, Sept. T., 1863, No. 977½:

THE CITY OF PHILADELPHIA }
vs. }
J. H. DIEHL. }

Summons case ex. Oct. 31, 1863, ret. 1 Mon. Nov., 1863. Service accepted. Nov. 11, 1863, Narr. and rule to plead filed.

Certified from the records of the said court this twenty-fourth day of November, anno Domini eighteen hundred and sixty-three.

JAS. THOMP'N UNDERDOWN, *pro Prothonotary.*

CITY AND COUNTY OF PHILADELPHIA, *ss:*

Summons.

The Commonwealth of Pennsylvania to the sheriff of Philadelphia County, greeting:

We command you that you summon J. H. Diehl, late of your county, so that he be and appear before our judges at Philadelphia, at our dis-
9 trict court for the city and county of Philadelphia, to be holden at Philadelphia, in and for the said city and county of Philadelphia, the first Monday of November next, there to answer the city of Philadelphia of a plea of trespass on the case, &c. And have you then and there this writ.

Witness the Honorable George Sharswood, doctor of laws, president of our said court, at Philadelphia, the 31st day of October, in the year of our Lord one thousand eight hundred and sixty-three.

F. A. TREGO, *for Prothonotary.*

Endorsed: 977½, Sept., 1863. The city of Philadelphia *vs.* J. H. Diehl. Sum's case. F. C. Brewster.

Service accepted of the within writ, and please enter our appearance for the defendant.

GEO. A. COFFEY, *U. S. Attorney.*
Nov. 7, 1863. J. HUBLEY ASHTON, *Ass't U. S. Att'y.*

In the district court for the city and county of Philadelphia, of September term, one thousand eight hundred and sixty-three, No. 977½.

COUNTY OF PHILADELPHIA, *ss:*

10 John H. Diehl, late of the county aforesaid, yeoman, was attached to answer the city of Philadelphia of a plea of trespass on the case, &c. Whereupon the said plaintiffs, by F. Carroll Brewster, their attorney, complain for that whereas the defendant, on the twentieth day of October, in the year of our Lord one thousand eight hundred and sixty-three, at the county aforesaid, was indebted to the plaintiffs in fifty thousand dollars for goods then and there sold and delivered by the plaintiffs to the defendant at his request; and also in the further sum of fifty thousand dollars for goods then and there bargained and sold by the plaintiffs to the defendant at his request; and also in the further sum of fifty thousand dollars for work then and there done, and materials for the same provided, by the plaintiffs for the defendant at his request; and also in the further sum of fifty thousand dollars for money then and there lent by the plaintiffs to the defendant at his request; and also in the further sum of fifty thousand dollars for money then and there paid by the plaintiffs for the use of the defendant at his request; and also in the further sum of fifty thousand dollars for money then and there had and received by the defendant for the use of the plaintiffs; and also in the further sum of fifty thousand dollars for money found to be due from the defendant to the plaintiffs on an account then and there stated be-
11 tween them; and also in the further sum of fifty thousand for interest then and there due and payable for the forbearance by the plaintiffs, at the defendant's request, for moneys before then due and owing from the defendant to the plaintiffs.

And defendant afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, in consideration of the several last-mentioned premises respectively, then and there promised the plaintiffs to pay them the said

several last-mentioned moneys respectively on request; yet the defendant hath disregarded his promises, and hath not paid any of the said moneys, or any part thereof, to the damage of plaintiffs fifty thousand dollars. And therefore they bring suit, &c.

JOHN DOE,
RICHARD ROE, *Pledges, &c.*

F. CARROLL BREWSTER, *pro Pl'ffs.*

Endorsed: District court. No. 977½. Sept. term, 1863. The City *vs.* Diehl. Narr. in assumpsit.

SIR: Enter rule to plead in eight days, or judgment sec. reg.
Nov. 9, 1863. F. CARROLL BREWSTER, *Plaintiffs' Attorney.*

Filed Nov. 10, 1863.

12 And thereupon the defendant, by his attorneys, George A. Coffey and J. Hubley Ashton, esquire, comes and defends the wrong and injury when, &c., and saith that he did not undertake or promise in manner and form as the said plaintiffs hath above thereof complained against him, and of this he puts himself upon the country, &c.

Afterwards, to wit, on the eighteenth day of December, A. D. 1863, the several parties, by their attornies, make and file an agreement in the words following, to wit:

It is agreed that the issue joined in the above *above* case may be tried by a jury selected from the panel of jurors for November sessions, 1863, of the district court of the United States for the eastern district of Pennsylvania, hereto annexed, as if a special venire had been regularly issued out of the circuit court, and the same jurors under the same had come into the said court to try the said cause.

F. CARROLL BREWSTER, *City Solicitor.*
GEO. A. COFFEY, *U. S. Attorney.*
J. HUBLEY ASHTON, *for Defendant.*

13 In the district court of the United States for the eastern district of Pennsylvania.

Panel of petit and special jurors, for November session, anno Domini 1863, *selected, summoned, and returned, to try the several causes at issue, at a session of the same court, to be held on Monday, November 16th,* 1863, *at* 11 *o'clock a. m., at the United States court-room,* 435 *Library street, over the new post office, in the city of Philadelphia.*

1. Abel, Charles R., painter, 829 North Fourth street.
2. Bailey, Joseph, clerk, 836 Wharton street.
3. Battus, William N., clerk, 1107 South Second street.
4. Bickley, Daniel, gent., 1432 North 12th street.
5. Caufman, Marcus, gent., 623 North Sixth street.
6. Carpenter, William, conveyancer, Lancaster, Lancaster Co.
7. Cochran, Daniel, clerk, West Philadelphia.
8. Caldwell, Thomas, clerk, 846 North Broad street.
9. Dreher, Michael H., gent., Stroudsburg, Monroe Co.
10. Dodson, Isaac T., builder, Mauch Chunk, Lehigh Co.
11. Dehaven, George, jr., cl'k, Col. av., W. of Frankford r'd.
12. Fox, David, hatter, Reading, Berks Co.
13. Goodhart, Jacob S., builder, Reading, Berks Co.
14. Garner, Samuel S., builder, 906 North Third street.
15. Heller, Jacob, silver plater, Marlborough st. above Girard avenue.

16. Holmes, Edmund A., gent., 1010 Spruce street.
17. Haverstick, Charles, gent., 1226 North 15th street.
18. Hamilton, Charles, gent., 1115 Lombard street.
19. Holgate, James, clerk, Richmond st. bel. Lehigh av.
20. Jeffries, Henry, victualler, 6th and Germantown r'd.
21. Kneedler, Simon, carman, 903 Marshall street.
22. Myers, George B., carriage trimmer, 476 N. 3d st.
23. Moran, William, printer, 1408 Ellsworth street.
24. Meaney, John I., broker, 1139 Shippen street.
25. Marshall, Ethelbert A., gent., 517 South 9th street.
26. Miles, Robert, clerk, Germantown, Philad'a Co.
27. Morton, Benjamin, builder, 132 Catharine street.
28. Nolan, William, tailor, Third street above Catharine.
29. Patterson, I. Knight, farmer, Tullytown, Bucks Co.
30. Patterson, Hiram, merchant, 261 South 11th street.
31. Paul, John R., clerk, 813 Girard avenue.
32. Rees, Charles B., gent., Filbert street above 10th.
33. Rea, Samuel I., printer, 216 South 8th street.
34. Selby, William B. R., hatter, 518 Federal street.
35. Smyth, John, gent., 1022 Carpenter street.
36. Sutphin, Luke V., builder, 250 Girard avenue.
37. Stratton, Isaiah G., paper hanger, 670 N. 12th street.
38. Spang, Samuel, merchant, 474 Dilwyn street.
39. Shields, William Lee, clerk, 1161 Sophia street.
40. Smith, John, chemist, 1312 Melon street.
41. Sinquet, Jacob F., clerk, Manyunk, Philad'a Co.
42. Treft, Frederick, printer, No. 2 Oneida Place.
43. Talley, Benjamin, builder, 706 Ulrich street.
44. Uhler, Harry N., druggist, Manyunk, Philad'a Co.
45. Wolf, Edward L., printer, Stroudsburg, Monroe Co.
46. Wynkoop, George, agent, 725 Spruce street.
47. Zane, Jacob S., jeweler, 314 Catharine street.
48. Zell, Henry, agent, 627 Pine street.

In the district court of the United States for the eastern district of Pennsylvania.

"Ordered that the notice by the marshal for striking a jury, at a certain time and place, shall be considered as entitling plaintiff or defendant to strike the same ex parte, without further notice; and that no venire shall issue unless the jury be stricken ten days before the return of such venire; provided that the striking of a jury is not to be considered as entitling either to a trial, if not otherwise entitled."

A true copy. G. R. FOX, *Clerk.*

To be stricken at the clerk's office of said court on Friday, the 6th of November, at 10 o'clock a. m.

WILLIAM MILLWARD, *Marshal.*

U. S. marshal's office, Philadelphia, October 27th, 1863.

14 Therefore let a jury thereupon come before the judges aforesaid, at Philadelphia aforesaid, on the thirty-first day of December, anno Domini eighteen hundred and sixty-three, by whom, &c., who neither, &c., to recognize, &c., because a well, &c.

On which said thirty-first day of December, A. D. 1863, come the parties aforesaid, by their attorneys aforesaid, and the jurors of the jury aforesaid being called, likewise come, to wit: John J. Meaney, William N. Battus,

William Lee Shields, Daniel R. Bickley, Charles B. Rees, Benjamin Talley, Ethelbert A. Marshal, Benjamin Morton, William B. R. Selby, William Nolan, Marcus Cauffman, and Henry Zell, who are duly empannelled, returned, chosen, tried, and sworn or affirmed to speak the truth of the matter within contained.

And afterwards, to wit, on the sixth day of January, A. D. 1864, the jury aforesaid, upon their oaths and affirmations aforesaid, respectively, do say that they find in favor of the plaintiff, and assess the damages at twenty-eight thousand seven hundred and forty-two dollars and two cents, ($28,742 02,) with six cents cost.

And thereupon J. Hubley Ashton, esquire, for the defendant, moves for a rule to show cause why a new trial should not be granted.

Afterwards, to wit, on the ninth day of January, A. D. 1864, George A. Coffey and J. Hubley Ashton, esquires, for defendant, file reasons for new trial in the words following, to wit:

15 The defendant assigns the following reasons for a new trial in the above case:

1. The taxes in question sought to be recovered by the plaintiff were taxes paid and collected on gas furnished for lighting lamps in the streets of the city of Philadelphia, and the said gas, under the provisions of the ordinances of the said city and laws of the State of Pennsylvania given in evidence on the trial of the cause, was liable to the taxes paid and collected by virtue of the act of Congress of July 1, 1862.
2. The verdict was against the law and the evidence.
3. The verdict was against the instruction of the court to the jury.

And afterwards, to wit, upon the day last aforesaid, this cause came on to be heard, upon the rule to show cause why a new trial should not be granted, and the arguments of counsel being heard, and mature deliberation being had thereupon, it is considered that the said rule be made absolute, and it is ordered that a new trial be granted.

Therefore let a jury thereupon come before the judges aforesaid, at Philadelphia, on the third day of October, anno Domini eighteen hundred and sixty-four, by whom, &c., who neither, &c., to recognize, &c., because as well, &c.

16 On which said third day of October, A. D. 1864, come the parties aforesaid, by their attorneys aforesaid, and the jurors of the jury aforesaid being called, likewise come, to wit: Thomas C. Jones, James Bain, James W. Martin, Benjamin Talley, Fairfax A. Morrell, Augustus Duborg, George W. Gampher, John Manderson, Edward C. Bonsall, William N. Bathers, John Grim, and Robert McCulloch, who are duly empannelled, returned, chosen, tried, and sworn or affirmed to speak the truth of the matter within contained.

And afterwards, to wit, on the fourth day of October, anno Domini eighteen hundred and sixty-four, the jury aforesaid, upon their oaths and affirmations aforesaid, respectively, do say that they find for the defendant.

And thereupon the verdict being affirmed by the jury and accepted by the court, it is considered by the court here that the defendant have and recover of the plaintiff their costs of suit, taxed at dollars cents.

17 Whereupon afterwards, to wit, on the eighth day of December, anno Domini eighteen hundred and sixty-four, the plaintiffs, by their solicitors, come into court and file their bill of exceptions, which being read and filed, is in the words and of the tenor following, to wit:

Be it remembered, that in October session, A. D. 1863, No. 4, came the city of Philadelphia, plaintiffs, into the circuit court of the United States

for the eastern district of Pennsylvania, and impleaded John H. Diehl, defendant, in a certain plea of trespass on the case, &c., in which the said plaintiffs declared, (*proat* narr,) and the said defendant pleaded, (*proat* pleas,) and thereupon issue was joined between them.

And afterwards, to wit, at a session of said court held at the city of Philadelphia, before the Honorable Robert C. Grier, presiding justice, and the Honorable John Cadwalader, associate justice of said court, on the third day of October, A. D. 1864, the aforesaid issue between the said parties came to be tried by a jury of the said district for that purpose duly impannelled, (*proat* list of jurors,) at which day came as well the said plaintiffs as the said defendant, by their respective attorneys, and the jurors of the jury aforesaid impannelled to try the said issues being also called, came and were then and there in due manner chosen and sworn or affirmed to try the
18 said issue. And upon the trial counsel for the plaintiffs read in evidence the act of Congress of the first day of July, A. D. 1862, section 75, (*proat* same;) the ordinances of councils of the city of Philadelphia of the 21st day of March, 1835; of the 14th day of January, A. D. 1841; of the 3rd day of June, A. D. 1841, and all ordinances relating to the ownership of and loans to the gas-works, (*proat* same;) also the act of assembly of the 2nd day of February, A. D. 1854, section 50, known as the consolidation act; and also the ordinance of councils of the 20th day of March, A. D. 1855, relating to loans by the city to the gas-works, (*proat* same.)

And plaintiffs called John P. Murta, who, being duly sworn, said: I am an officer of the board of trustees of the Philadelphia Gas-works. They manage the works on behalf of the city. There are twelve trustees; I have been there twenty-seven years, and registrar seven years; the gas used in the public lamps is supplied by the gas-works owned by the plaintiffs; there are about seven thousand public lamps in the city; the city have paid to the defendant, as collector of the United States internal revenue tax, $26,875 57 in monthly payments on this list, (which the witness held
19 in his hands.) This is correct; this sum was paid only for gas used in the street lamps. The defendant's receipts are here, (exhibiting them; *proat* same.) The first receipt is dated January 24, 1863, and reads as follows:

Received January 24, 1863, from the trustees of the Philadelphia gas-works, $1,836 90, being the consumption of gas in the public lamps for the month of September, paid under protest that same is not legally due.

(Signed) JOHN H. DIEHL.

We have receipts like this for all the other payments. We received certain letters from the defendant before we consented to make these payments.

And the counsel for the plaintiffs read the following letters from the defendant to the trustees of the gas-works: one dated December 2d, 1862, to Mr. Weston, (*proat* same;) one dated December 6th, 1862, to the trustees, claiming $3,540 10 for gas manufactured and sold by them, (*proat* same;) one dated January 15, 1863, from the defendant to the trustees, (*proat* same,) threatening proceedings; and other letters of dates of Jan'y 24 and Feb'y, 16, 1863, from defendant to the trustees, demanding payment of the tax and threatening proceedings, (*proat* same.)

And the witness further said: The demands for payment on the letters of January 24, 1863, refer to the whole amount of gas, public and pri-
20 vate. I had an interview with the defendant about the date of the letter, asking an inventory of our property. I said we were prepared to pay for the gas used for private consumption, but not for public gas. He said he could not receive one without the other. The defendant said unless the bills were paid he must proceed and levy on the works.

Under that, we paid under threat and protest. Our cashier was careful to discriminate between the public and the private consumption. The meters were all kept, which record the public and private consumption. The public lamps cost the city over $250,000 per year.

There are about seven thousand public lamps. The gas is supplied to them by the trustees of the Philadelphia Gas-works. The trustees are elected by councils under their ordinances. The works are in the possession of those trustees exclusively.

And being cross-examined, said: The trustees made a return to defendant long before we got any letter or threat from defendant. There had been a return to defendant. All of our purchases are made for ourselves—the coal, &c; councils furnish the means to extend the work, to lay the pipe, &c. January 14, 1841, is the date of the ordinance authorizing the plaintiffs' taking possession of the works.

21 And being re-examined, said: The purchases are made by the trustees in the name of the city of Philadelphia. The official bonds are taken in the name of the city. There is no loan now outstanding earlier than June 17th, 1841. Our three first loans have been paid off as follows: The first loan of $150,000, paid January 1, 1862; the second loan of $200,000, paid Jan'y 1, 1863; and the third loan of $125,000, paid March 1, 1861. We have our bonds in the sinking fund. The bonds are held by individuals generally.

And the plaintiff closed.

And the court adjourned to the 4th day of October, A. D. 1864, when the counsel for defendant recalled for cross-examination the same witness, John P. Murta, who further said: The city pays for the gas consumed in the public lamps at present monthly. The bills used to be made out by the average consumption, but now the city pays so much per lamp.

And being re-examined by the plaintiffs' counsel, said: The city hands over to the trustees so much per lamp. That money is used for the purchase of coal and the payment of hands. The money paid to the defendant

22 was paid out of the city treasury. The city is not reimbursed for the money thus paid to the trustees for the lamps.

And being re-examined by defendant, said: Now we charge the city because she has made appropriation for the tax. We omitted it at first because we knew the city had made no appropriation.

And the witness was asked the following question: Does the city receive any profit from the gas used in the public lamps?

Which the witness answered, No, sir.

And the witness being further examined by the defendant's counsel, said: The city is charged $45 00 per lamp. There was an arrangement at first charging the city half the price, but the subsequent arrangement is not on that basis, but on the basis of actual cost. Last year it was on that basis. We furnish the city at the rate of $1 45 per thousand feet, and private consumers at the rate of $2 25, but there is no profit, for the trustees have now the full charge of the lamps, the repairing and cleaning of them, &c.

And the defendant rested. And after argument of counsel the following points for charge were submitted to the learned court on the part of the plaintiffs and of the defendant respectively:

23 CITY v. DIEHL. } U. S. C. C., Oct. sess., 1863, No. 4.

The plaintiffs respectfully request the learned judge to charge the jury as follows:

I. That if the jury believe the evidence in the cause, they may find a verdict for plaintiffs for the amount claimed.

II. That if the jury believe that the plaintiff paid to defendant the sums claimed in this case under protest and under duress of threats of seizure of their property, they are entitled to recover back the sums so paid.

III. That the provisions of the acts of Congress imposing a tax on gas do not apply to gas manufactured and used by the municipal corporation, pl'ff, for public lamps under their corporate duty to light the public highways of the city of Philadelphia.

IV. That if the jury believe from the evidence that the gas on which the taxes have been paid to the defendant under protest was not manufactured or made and sold, or removed for consumption or for delivery to others than agents for pl'ff, the pl'ff are entitled to recover back the taxes so paid.

24 V. That if the jury believe from the evidence that the gas on which the taxes have been paid to the defendant under protest was manufactured by the pl'ff, "not for sale, but for their own use and consumption," the pl'ffs are entitled to recover back the taxes so paid.

F. CARROLL BREWSTER, *City Solicitor.*

CITY
v.
DIEHL

The defendant respectfully requests the learned court to charge the jury as follows:

1. That all illuminating gas manufactured or made and sold or furnished by the trustees of the Philadelphia Gas-works, created and constituted as said trustees are by the several laws and ordinances given in evidence in relation thereto, is liable to tax under the act of Congress entitled An act to provide internal revenue, to support the government, and to pay interest on the public debt, passed July 1st, 1862, and the supplement thereto passed March 3, 1863, whether said gas has been furnished to and consumed by private consumers at the rates fixed by said trustees, or has been furnished to and consumed by the city of Philadelphia in her public lamps or in her public buildings and offices, at the rates fixed by said trustees and regulated

25 by the ordinances which require said trustees to furnish gas for consumption in the public lamps, &c., at half the rate charged to private consumers.

2. That the trustees of the Philadelphia Gas-works, by the laws and ordinances creating and constituting them a *quasi* corporation, and by reason of the several loans created for the support and management of the said gas-works, hold such a relation to the private consumer, the loan-holder, and the city of Philadelphia, that all illuminating gas manufactured or made or sold or furnished by them to private consumers, or to the city of Philadelphia to be used in public lamps or in the public offices or buildings of the city, is liable to and chargeable with the tax imposed by the act passed July 1st, 1862, and the supplement thereto, passed March 3, 1863.

And the learned presiding justice declined to charge the jury as requested in the plaintiff's points, and charged as follows:

"I instruct the jury that the tax was properly assessed, and it is the duty of the jury to find a verdict for the defendant."

26 And the learned associate justice concurred in the foregoing charge of the presiding judge.

Thereupon the counsel for the said plaintiffs did then and there except to the aforesaid ruling, charge, and opinion of the said court; and inasmuch as the said ruling, charge, and opinion so excepted to do not appear upon the record, the said counsel for the said plaintiffs did then and there tender this

bill of exceptions to the opinion of the said court, and requested the seals of the judges aforesaid should be put to the same according to the form of the statute in such case made and provided. And thereupon the aforesaid judges, at the request of the said counsel for the plaintiffs, did put their seals to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this 6th day of October, A. D. 1864.

[SEAL.] R. C. GRIER, *Asso. Jus.*

27 *City ordinances relating to the Philadelphia gas-works.*

An ordinance for the construction and management of the Philadelphia Gas-works, passed 21st March, 1835.

SECT. I. That for the construction and carrying on the works hereinafter provided for the sum of one hundred thousand dollars, to be divided into one thousand shares of one hundred dollars each, shall be raised in the following manner: A book shall be opened by the city treasurer, at such convenient place as he may designate, on the first Monday of April, 1835, and be kept open during the office hours of said treasurer for six judicial days thereafter, in which the said treasurer shall permit all persons of lawful age, either personally or by attorney duly authorized, to subscribe for any number of shares of the said stock, on the following conditions: The said book shall be headed in the following manner: "We, whose names are hereunto subscribed promise to pay to the city treasurer the sum of one hundred dollars for each share of stock set opposite to our respective names, on the days and times and in such quotas and proportions as may be fixed by the trustees appointed according to the provisions of an ordinance entitled 'An ordinance for the construction and management of the Philadelphia Gas-works,' passed the day of , 1835." The said subscribers shall pay to the city treasurer, at the time of subscribing, ten dollars on each share, and the remaining ninety dollars on each share at such time and in such proportions as shall be required by the trustees hereinafter provided for: *Provided*, That if such subscriptions shall exceed the full number of one thousand shares, they shall be divided amongst the subscribers pro rata, according to the subscriptions, but not less than one share shall be allotted to any subscriber: *And provided further*, That the said trustees shall

28 have authority, on the application of a majority of the stockholders voting according to their respecive interests, and with the consent of the select and common councils, to borrow any sum not exceeding twenty-five thousand dollars, or to receive subscriptions for any additional number of shares, not exceeding two hundred and fifty in the whole, if the same shall be found necessary to complete the works and put them in operation.

SECT. II. That when the said subscriptions are completed, and the payments made in full on each share, certificates to be signed by the mayor of the city, and countersigned by the city treasurer, transferable in like manner with the certificates of the funded debt of the city, shall be issued in the following form:—

PHILADELPHIA, , 1835.

This is to certify that is the owner of shares of the stock created by an ordinance passed the day of ,1835, for the construction and management of the Philadelphia Gas-works, for which entitled to the pro rata proportion of the profit arising from the said works, to be declared according to the provisions of the fourth section of said ordinance; subject, nevertheless, to the right of the mayor, aldermen, and citizens of Philadelphia, at any time the select and common councils may deem it expedient, to take possession of

said works, and convert the said stock into a loan, redeemable in twenty years from the date of such conversion, bearing an interest of six per cent. per annum, payable half-yearly on the first days of February and August: *Provided*, That the said mayor, aldermen, and citizens of Philadelphia are not to be responsible to the holder of this certificate, prior to such conversion, for the payment of any money on account of said works, other than his, her, or their proportion of the profits declared as aforesaid, and actually paid into the city treasury.

SECT. III. That within ten days after the passage of this ordinance, the select and common councils shall choose by ballot twelve citizens of Philadelphia, who shall be denominated trustees of the Philadelphia Gas-works, six of said trustees to be elected by the select council and six to be elected by the common council. As soon as said elections are completed, the clerks of councils, respectively, shall divide the persons so chosen, by lot, into three classes; the first class to serve one year, the second class to serve two years, and the third class to serve three years, or until the successors shall have been appointed, and record the result upon the minutes of councils. And annually thereafter, at the last stated meeting in January, the select and common councils shall each respectively elect two citizens of Philadelphia, to serve as trustees for the term of three years, in the place of those whose term of service shall have expired. Not more than two members of each council shall be trustees at any time, and any vacancies that may occur shall be filled by special elections, to be held by the body in whose delegation in the board of trustees the vacancy may exist. The said trustees, seven of whom shall be a quorum for the transaction of business, shall
29 meet within ten days after their election, and choose out of their own body a president; and the election of president shall take place in each succeeding year at the meeting next after the election of trustees.

SECT. IV. That it shall be the duty of the trustees so appointed to proceed forthwith to construct suitable works for the manufacture of carbureted hydrogen gas from bituminous coal, for the purpose of public and private illumination, and to lay pipes for its distribution through the city. The said works shall be on a scale competent to manufacture seventy-five thousand cubic feet of gas daily, and the arrangement of the pipes for distribution and delivery shall be approved by the watering committee. The said trustees shall keep accurate accounts of their receipts and disbursements, and report the same, together with a statement of their proceedings, to councils annually in the month of January, and give such other information as may from time to time be required by the select or common council. They shall semi-annually, on the first day of February and August, declare a dividend of the profits arising from the manufacture and sale of gas, after deducting the rent of the lot, the expense of manufacturing the gas, the cost of repairs to the works, and the incidental charges of the establishment, and issue a requisition on the mayor for the payment of said dividends to the holders of the certificates.

SECT. V. That the trustees aforesaid be, and they are hereby, vested with powers necessary for the construction of the works herein provided for, and for the purpose of carrying into effect the intents of this ordinance, are hereby empowered to purchase materials, make contracts, and employ such agent or agents as they may deem necessary: *Provided*, That no contract shall be entered into or expenses incurred to exceed the amount of the subscriptions for the construction of the works; that no trustee, superintendent, or agent of the Philadelphia Gas-works shall be either directly or indirectly concerned or interested in any contract or engagement for doing work or labor, or furnishing or providing materials, under the provisions of this ordinance; nor shall any act of said trustees impose any liability whatever on

the mayor, aldermen, and citizens of Philadelphia beyond the amount of the said subscriptions. The said trustees shall, from time to time, prepare and submit to councils, for their approbation, rules and regulations under which the gas may be furnished to private consumers and to the public lamps: *Provided*, That as many public lamps, not exceeding three hundred in the whole, as may be required by the committee on lighting and watching, shall be supplied at one-half the price paid by private consumers; the fixtures and meters therefor to be approved of by the last-named committee, being provided by the trustees without expense to the city corporation.

SECT. VI. [Repealed by ordinance of December 22, 1836.]

SECT. VII. That the ground owned by the corporation of Philadelphia, bounded east by Front street, north by Filbert street, south by High street, and west by the river Schuylkill, be, and is hereby, appropriated for
30 the location and use of the gas-works aforesaid, for which a rent of five hundred dollars per annum shall be charged to the works: *Provided*, That the select and common councils may, at any time, reclaim so much of said lot as may, in the opinion of the trustees aforesaid, not be necessary for the accommodation of the works herein provided for.

An ordinance for the distribution of the stock of the Philadelphia Gas-works, passed 6th April, 1835.

That in case the number of subscribers to the stock of the Philadelphia Gas-works shall exceed one thousand persons, it shall be the duty of the city treasurer to divide the stock amongst them by lot immediately after the closing of the subscription book, agreeably to the notice given by the city treasurer.

A supplement to an ordinance for the construction and management of the Philadelphia Gas-works, passed April 30, 1835.

That the city treasurer be, and he is hereby, authorized to permit transfers of the stock of the Philadelphia Gas-works to be made, prior to the payments in full on each share, under such regulations as he may think proper; anything in the second section of the ordinance to which this is a supplement to the contrary notwithstanding.

A supplement to the ordinance entitled "An ordinance for the construction and management of the Philadelphia Gas-works, passed March 21, 1835," approved January 28, 1836.

SECT. I. That the trustees of the Philadelphia Gas-works be, and they are hereby, authorized to receive subscriptions for an additional number of shares of stock in the said works, not exceeding two hundred and fifty in the whole, under the following restrictions and conditions, viz: 1st. The said number of shares shall be raised by the issue of one thousand certificates of quarter shares the holders of the original shares of stock in the said company being entitled to receive as many quarter shares as may be equivalent to the number of original shares held by each; and if any holder of original shares shall decline or neglect to apply for his quarter shares, such quarter shares shall be sold by the trustees of the Philadelphia Gas-works, at auction, and the net proceeds of the sale credited to the works. 2d. The par
31 value of such quarter shares shall be twenty-five dollars, and none shall be sold for less than its par value. 3d. The said quarter shares may at any time be converted into whole shares by the return to the city treasurer of four certificates of quarter shares, upon the receipt and cancelment of which he shall issue to the person returning the same a certificate for one whole share. 4th. The new whole shares created by this ordinance shall be placed on the same footing and entitle the holders thereof to the

same rights and privileges as are or may be enjoyed by the holders of original shares under the ordinance to which this is a supplement.

SECT. II. The trustees of the Philadelphia Gas-works may adopt such rules and regulations as to the time and mode of disposing of the new stock as they may deem expedient, provided the same shall not be repugnant to the provisions of this ordinance.

An ordinance for the protection of the Philadelphia Gas-works, passed October 6, 1836.

That any person or persons who shall open a communication into the street gas main, or other gas-pipe, without authority from the inspector or other authorized agent of the trustees of the Philadelphia Gas-works, or who shall let on the gas after it has been stopped by order of said inspector or other authorized agents, for repairs or any other purpose, or who shall put up any pipes or burners in addition to the pipes or burners originally put up and inspected, and introduce the gas into them without authority as aforesaid, shall be subject to a penalty of not less than ten nor more than fifty dollars for each and every such offence; one half to be paid to the informer and the other half into the city treasury.

An ordinance for the extension of the Philadelphia Gas-works, passed 22d December, 1836.

SECT. I. That for the purpose of enabling the trustees of the Philadelphia Gas-works to extend the said works, especially by laying down a greater extent of pipes for the distribution of gas, the mayor of the city is hereby authorized, on the requisition of the said trustees, to borrow such sums of money as they may require, not exceeding one hundred and fifty thousand dollars in the whole, for which certificates of one hundred dollars and upwards, but containing no fractional part of one hundred dollars, shall be issued to the lenders, which certificates shall be transferable only at the office of the Philadelphia Gas-works.

32 SECT. II. That the said loans shall be redeemable on the first day of January, anno Domini one thousand eight hundred and sixty-two, and shall bear such rate of interest, not exceeding six per centum per annum, as may be fixed by the said trustees, payable semi-annually at the office of the Philadelphia Gas-works, on the first day of January and July. The faith of the city and the buildings, apparatus, pipes, and fixtures of the said gas-works shall be pledged for the repayment of the said loan; and in order that provision may be made for the payment of the interest accruing on the loans hereby authorized, and for the redemption of the principal thereof, when the same shall full due, the trustees are hereby authorized and required to set apart and reserve, out of the moneys received by them from the manufacture and sale of gas, the sum of eight per centum per annum on the amount of the certificates issued by virtue of this ordinance, before any dividend of the profits of the said works shall be declared and distributed among the stockholders, which said sum of eight per centum shall be applied in the first place to the payment of the interest accruing on the loans hereby authorized, and the balance which remains after providing for the said interest shall be invested in some productive stock, other than that of the Philadelphia Gas-works, by the said trustees, to form, with the interest received thereon, a sinking fund for the redemption of the loans hereby authorized, which balances and interests so forming the said sinking fund shall be kept separate and distinct from the other funds of the said trustees, who shall furnish to the select and common councils, annually, in the month of January, a statement of the amount thereof, and the stocks wherein the same shall be invested.

SECT. III. That if the said sinking fund shall not, at the period when the loans hereby authorized become due and payable, be sufficient to pay off and discharge the same, and the said trustees shall neglect or be unable to provide other funds for that purpose, so that the mayor, aldermen, and citizens of Philadelphia shall be obliged to make up from their own resources any deficiencies which may thereby occur, then the said trustees shall, annually, on the first day of July, before declaring any dividend of profits, pay over to the city treasurer eight per centum on the amount of certificates issued by virtue hereof, until the mayor, aldermen, and citizens of Philadelphia shall be fully and entirely reimbursed for all the sums of money, whether of principal or of interest, paid by them on account of the said certificates of loan, with interest thereon at the rate of five per centum per annum.

SECT. IV. That three hundred public lamps, in addition to those mentioned in the fifth section of the ordinance for the construction and management of the Philadelphia Gas-works, passed March 21, 1835, shall be supplied with gas at one half the price paid by private consumers, the fixtures and meters thereof to be provided by the city: *Provided*, That the price paid for gas supplied to said lamps shall not exceed the rate of one dollar and seventy-five cents for one thousand cubic feet, and that the said lamps shall be
33 erected under the direction of the committee on police, or as may be hereafter provided by councils.

SECT. V. That so much of the ordinance passed the 21st day of March, 1835, for the construction and management of the Philadelphia Gas-works, as requires that all monies arising from the manufacture and sale of gas shall be paid into the city treasury, is hereby repealed; and the receipt and payment of all moneys on account of said gas-works shall hereafter be confided to the trustees of said works and their authorized agents, and the city treasurer is hereby authorized to transfer to the said trustees all the books and papers in his custody relating to said works: *Provided*, That the select and common councils of Philadelphia, or either of them, shall be authorized by any committee they may designate for that purpose to examine all the books, accounts, and papers relating to said works which may at any time be in possession of said trustees, or any of their officers or agents.

SECT. VI. That the provisions of this ordinance shall be carried into effect on the stockholders of the Philadelphia Gas-works consenting thereto, which consent shall be certified in writing, under their hands, to the select and common council of Philadelphia, within thirty days from the first day of January, 1837; but nothing herein contained shall be construed to impair or in any way to affect the right of the mayor, aldermen, and citizens of Philadelphia to take possession of the said works agreeably to the provisions of the second section of the ordinance for the construction and management of the Philadelphia Gas-works, passed March 21st, 1835, converting the original stock of one hundred and twenty-five thousand dollars into a loan, according to the provisions of said second section, and assuming absolutely the payment of the loans authorized by this ordinance, and also the interest, if any, which may become payable thereon after such conversion and assumption: *Provided*, That if the said mayor, aldermen, and citizens of Philadelphia shall so take possession of the said works before the first day of January, anno Domini one thousand eight hundred and sixty-two, then the stocks composing the sinking fund, according to the second section of this ordinance, shall be sold, and the proceeds thereof, together with any moneys belonging thereto, shall be distributed by the trustees as a dividend of profits to the stockholders.

An ordinance regulating the transfer of stock of the Philadelphia Gas-works, passed 31st January, 1837.

That from and after the passage of this ordinance, all transfers of stock in

the Philadelphia Gas-works shall be made before the register appointed by the trustees of said works, anything in any former ordinance to the contrary notwithstanding.

34 An ordinance for the further extension of the Philadelphia Gas-works, passed 8th February, 1838.

SECT. I. That for the purpose of enabling the trustees of the Philadelphia Gas-works to extend the said works, especially by laying down a greater extent of pipes for the distribution of gas, the mayor of the city is hereby authorized, on the requisition of the said trustees, to borrow such sums of money as they may require, not exceeding two hundred thousand dollars in the whole, (in addition to the loan heretofore authorized,) for which certificates of one hundred dollars and upwards, but containing no fractional part of one hundred dollars, shall be issued to the lenders, which certificates shall be transferable only at the office of the Philadelphia Gas-works. The said loan shall be redeemable on the first day of January, anno Domini one thousand eight hundred and sixty-three, and shall bear such rate of interest, not exceeding six per centum per annum, as may be fixed by the said trustees, payable semi-annually, at the office of the Philadelphia Gas-works, on the first days of January and July: [*Provided*, That any premium received on said loans shall be paid to the city treasurer, and by him placed to the credit of the sinking fund of the city.] The faith of the city and the buildings, apparatus, pipes and fixtures of the said gas works shall be pledged for the punctual payment of the interest from time to time, as the same may become due; and for the ultimate reimbursement of the principal of the said loan, when the same shall fall due, and in order that provisions may be made for the same, the trustees are hereby authorized and required to set apart and reserve out of the moneys received by them from the manufacture and sale of gas, the sum of eight per centum per annum on the amount of the certificates issued by virtue of this ordinance, before any dividends of the profits of the said works shall be declared and distributed among the stockholders, which said sum of eight per centum per annum, after deducting therefrom so much as may be necessary for the payment of interest on the loan, shall constitute a sinking fund, which said sinking fund, in the investment, management, appropriation, and duration thereof, shall be liable to all the provisions and restrictions contained in the second and third sections of "An ordinance for the extension of the Philadelphia Gas-works," enacted on the 22d December, 1836.

SECT. II. That four hundred public lamps in addition to those heretofore provided for, shall be supplied with gas on the terms, conditions, and stipulations contained in the fourth section of the said ordinance for the extension of the Philadelphia Gas-works.

SECT. III. That for the greater security of the premises into which gas has been or shall be introduced, it shall be lawful for the said trustees to require
that a suitable stop-cock or other apparatus shall be placed between
35 the wall of the building and the gas-meter, and that the expense of the stop-cock or other apparatus, as well as of all service pipes and tubes beyond the length of sixteen feet which may be required to supply any premises with gas, shall be reimbursed to the said trustees by the consumers of gas on the said premises.

SECT. IV. That it shall be lawful for the said trustees to provide, from time to time, such further and other rules and regulations under which the gas may be furnished to private consumers as experience may suggest and as the said trustees may deem necessary or convenient in the use or consumption of gas.

SECT. V. That in order to enable the said trustees to extend gas to Dela-

ware avenue, the wharves, and other parts of the eastern front of the city, it shall be lawful for the said trustees to erect and construct one or more station gasometers, to be located at such point or points in the city of Philadelphia as they may deem expedient, which location shall first be approved by councils.

SECT. VI. That the provisions of this ordinance shall be carried into effect as soon as the holders of the stock of the said gas-works shall, at a meeting to be called by the trustees for that purpose, approve the same; and provided also that the holders of a majority of the stock of the said gas works shall, under their hands, certify to the select and common councils their consent thereto; but nothing herein contained shall be construed to impair or in any way to affect the right of the mayor, aldermen, and citizens of Philadelphia to take possession of the said works, agreeably to the provisions of the second section of the "Ordinance for the construction and management of the Philadelphia Gas-works," passed March 21, 1835, converting the original stock of one hundred and twenty-five thousand dollars into a loan, according to the provisions of the said second section, and assuming absolutely the payment of the loans authorized by this ordinance, and by "An ordinance for the extension of the Philadelphia Gas-works," passed December 22, 1836; and also the interest, if any, which may become payable on said loans after such conversion and assumption: *Provided*, That if the said mayor, aldermen, and citizens of Philadelphia shall so take possession of the said works before the first day of January, anno Domini one thousand eight hundred and sixty-three, then the stocks composing the sinking fund, according to the first section of this ordinance, shall be sold, and the proceeds thereof, together with any moneys belonging thereto, shall be distributed by the trustees as a dividend of profits to the stockholders.

SECT. VII. That if the net proceeds of the sales of gas shall in any one year enable the trustees to declare a dividend of upwards of twelve per centum, one half of such excess beyond the said twelve per centum shall be applied and appropriated to the extension of the pipes and works for supplying the city with gas.

36 An ordinance for the further extension of the Philadelphia Gas-works, passed 14th January, 1841.

SECT. I. That for the purpose of enabling the trustees of the Philadelphia Gas-works to extend the said works, especially by laying down a greater extent of pipes for the distribution of gas, the mayor of the city is hereby authorized, on the requisition of the said trustees, to borrow such sums of money as they may require, not exceeding one hundred and fifty thousand dollars in the whole, (in addition to the loans heretofore authorized,) for which certificates of one hundred dollars and upwards, but containing no fractional part of one hundred dollars, shall be issued to the lenders, which certificates shall be transferable only at the office of the Philadelphia Gas-works. The said loans shall be redeemable on the first day of January, anno Domini one thousand eight hundred and sixty-three, and shall bear such rate of interest, not exceeding six per centum per annum, as may be fixed by the said trustees, payable semi-annually at the office of the Philadelphia Gas-works, on the first day of January and July. The faith of the city and the buildings, apparatus, pipes, and fixtures of the said gas-works shall be pledged for the punctual payment of the interest, from time to time, as the same may become due, and for the ultimate reimbursement of the principal of the said loan when the same shall fall due; and in order that provision may be made for the same, the trustees are hereby authorized and required to set apart and reserve out of the moneys received by them from the manufacture and sale of gas the sum of eight per centum per annum on the amount of the

certificates issued by virtue of this ordinance, before any dividends on the profits of the said works shall be declared and distributed among the stockholders, which said sum of eight per centum per annum, after deducting therefrom so much as may be necessary for the payment of interest on the loan, shall constitute a sinking fund [which said sinking fund shall be paid over to the city treasurer, and placed to the credit of the sinking fund of the Philadelphia Gas-works; and the said sinking fund so paid over shall be invested in some productive stock, other than that of the Philadelphia Gas-works, under the direction, control, and management of the select and common councils of the city of Philadelphia, and shall be subject to all the provisions and conditions hereinafter contained in relation to the sinking fund of the said gas-works: *Provided*, That any premium received on said loans shall be paid to the city treasurer, and be by him placed to the credit of the sinking fund of the Philadelphia Gas-works.]

Sect. II. That it shall be the duty of the said trustees, whenever they shall be so required by the select and common councils of the city of Philadelphia, to borrow, on the terms and under the conditions set forth in the first section of this ordinance, any sum of money not exceeding fifty
37 thousand dollars in one year, to be expended in extending said works, especially by laying down a greater extent of pipes for the distribution of gas; and the said trustees shall be bound to supply with gas one hundred public lamps for every fifty thousand dollars borrowed by them in pursuance of this or any other ordinance which may hereafter be passed, on the terms, conditions, and stipulations contained in the fourth section of an ordinance entitled "An ordinance for the extension of the Philadelphia Gas-works," passed on the 22d day of December, 1836.

Sect. III. That no dividend shall be made or declared by the said trustees except from the clear net profits of the said works, first deducting from their receipts all expenses incurred in making and manufacturing gas, repairing, keeping up, and carrying on the works, and paying over to the sinking fund the various sums required by this and other existing ordinances; and no such dividend shall in any case exceed ten per centum per annum.

Sect. IV. That any surplus income received by the said trustees, after deducting all the expenses aforesaid, paying over to the sinking fund the sums directed and required by this and other existing ordinances, and making the dividend aforesaid, shall be employed in extending the works, if necessary, and in providing, putting up, and lighting public lamps for the use of and under the direction of the mayor, aldermen, and citizens of Philadelphia.

Sect. V. In addition to the appropriations heretofore directed to be made to the sinking fund of the Philadelphia Gas-works, the said trustees shall pay the sum of five hundred dollars on the first days of January and July, in every year, to the city treasurer, for the use of the said sinking fund, for the term of ten years from the first day of January, A. D. 1841; the first payment to be made on the first day of July, A. D. 1841, unless the mayor, aldermen, and citizens of Philadelphia shall within that period take possession of the said gas-works, in conformity to the provisions of the second section of the ordinance for the construction and management of the Philadelphia Gas-works, passed 21st March, 1835, and in such case, up to the period at which they shall so take possession, in full lieu and discharge of all claims upon the stockholders of the said gas-works, by the mayor, aldermen, and citizens of Philadelphia, for or on account of the public lamps heretofore put up by them, and charged to the account of capital stock and of the premium received by the said trustees on the first loan, authorized by an ordinance passed 22d December, 1836.

Sect. VI. [That the said sinking fund shall be transferred to and be under the control of the mayor, aldermen, and citizens of Philadelphia, to whom

all future payments and appropriations required by this and existing ordinances, on acccount thereof, shall be made.]

SECT. VII. [That whenever the said trustees shall find it necessary to remove any portion of the stone, pebble, or wooden pavements, for the purpose of laying down and extending the pipes for the distribution of gas throughout the city, the repaving or repairs to the same shall be done
38 by the city commissioners, and the said city commissioners are hereby authorized to collect from the said trustees the cost of such repaving or repairs, and pay the same to the city treasurer.

SECT. VIII. That whenever the mayor, aldermen, and citizens of Philadelphia shall, under the provisions of existing ordinances, take possession of the gas-works, the whole of the sinking fund and its accumulations, provided for by this or by any other ordinance heretofore passed, shall be and become the absolute property of the said mayor, aldermen, and citizens of Philadelphia, to be applied by them to the extinguishment of the debts and loans contracted by them for the erection and extension of the said works; [*Provided*, That if the said mayor, aldermen, and citizens shall take possession of said works at any time before the year 1863, then they shall pay to the said trustees, for the benefit of the stockholders, the sum of twenty-six thousand five hundred and thirty-seven dollars, with interest at six per centum per annum, from the first day of January, 1841, up to the time at which they shall so take possession, in five per cent. loans of the city of Philadelphia, having twenty years to run, in lieu of all claims upon said sinking fund, or in cash at the option of the said stockholders.*]

SECT. IX. That the provisions of this ordinance shall be carried into effect as soon as the holders of the stock of the said gas-works shall, at a meeting to be called by the trustees for that purpose, approve the same; and provided also, that the holders of a majority of the stock of the said gas-works shall, under their hands, certify to the select and common councils their consent thereto; but nothing herein contained shall be construed to impair or in any way to affect the right of the mayor, aldermen, and citizens of Philadelphia to take possession of the said works agreeably to the provisions of the second section of the ordinance for the construction and management of the Philadelphia Gas-works, passed March 21, 1835, converting the original stock of one hundred and twenty-five thousand dollars into a loan, according to the provisions of the said second section, and assuming absolutely the payment of the loans authorized by this ordinance, by an ordinance for the extension of the Philadelphia Gas-works, passed December 22d, 1836, and by an ordinance for the further extension of the Philadelphia Gas-works, passed February 8th, 1838; and also the interest, if any, which may become payable on said loans after such conversion and assumption.

SECT. X. That unless the stockholders of the said gas-works shall accept the provisions of this ordinance, and certify their approval and consent to the select and common councils, in the manner prescribed by the ninth section of this ordinance, before the 25th day of February, 1841, the mayor, aldermen, and citizens of Philadelphia shall, on the first day of March, 1841, take possession, and from and after that day shall be deemed to have
39 possession, in their own right, of the said Philadelphia Gas-works; and the stock of the said gas-works shall be, and the same hereby is, converted into a loan, redeemable in twenty years from the said date and not before, unless with the consent of the holders of said certificates, which shall be transferable in like manner with other certificates of city debt; which said loan shall bear an interest at the rate of six per centum per annum

* This proviso is repealed by the second section of the ordinance of January 28, 1844, *post*.

from the said first day of February, 1841, payable half-yearly, on the first days of February and August: *Provided*, That if the provisions of this ordinance shall not be accepted by the stockholders, the said works shall continue under the direction and superintendence of the present board of trustees, with all their present powers, until otherwise provided for.

SECT. XI. That any ordinance or such parts thereof heretofore passed as are inconsistent with this ordinance be, and the same are hereby, repealed.

A supplement to an ordinance entitled "An ordinance for the further extension of the Philadelphia Gas-works," passed 14th January, A. D. 1841, approved 28th January, 1841.

SECT. I. That if the mayor, aldermen, and citizens of Philadelphia shall take possession of the Philadelphia Gas-works at any time before the year 1863, then they shall pay to the trustees of the said works, for the benefit of the stockholders, the sum of thirty thousand nine hundred and twenty-eight dollars and fourteen cents, being the whole amount of the sinking fund of the said gas-works and its accumulations, on the first day of January, A. D. 1841, with interest at the rate of six per cent. per annum from the said first day of January, A. D. 1841, up to the time at which they shall so take possession, in five per cent. loans of the city of Philadelphia, having twenty years to run, or in cash, at the option of the said stockholders, in lieu of all claims upon said sinking fund.

SECT. II. That the proviso of the eighth section of the ordinance to which this is a supplement be, and the same is hereby, repealed; and if the stockholders of the said gas-works accept the terms of the ordinance to which this is a supplement, in pursuance of the ninth section thereof, the first section of this ordinance shall be as binding on the mayor, aldermen, and citizens of Philadelphia as though it had been inserted therein in the place of the said proviso.

40 An ordinance making appropriations and for raising supplies for the year 1841, passed 20th May, 1841.

SECT. V. That the net profits of the Philadelphia Gas-works shall be appropriated by the trustees thereof, semi-annually, as the same accrue, to the sinking fund of the said gas-works, and the said sinking fund shall be invested and managed in the manner now provided by ordinance for the same.

An ordinance providing for the issue of certificates of loan to holders of stock of the Philadelphia Gas-works, passed 3d June, 1841.

SECT. I. That the mayor be, and he is hereby, authorized, on the requisition of the trustees of the Philadelphia Gas-works, to issue certificates of loan to the several stockholders of the said works for the amount of stock held by them respectively, the said certificates to bear interest from the first day of March, 1841, at the rate of six per cent. per annum, payable half-yearly on the first day of February and August in every year, redeemable on the first day of March, 1861, and not before, unless with the consent of the holders of said certificates, which shall be transferable at the office of the Philadelphia Gas-works, or at such other place as shall be hereafter designated: *Provided*, That it shall be lawful for the mayor, if the stockholders respectively consent thereto, to fix the days for the payment of interest on the first day of July and January.

An ordinance for the further extension and management of the Philadelphia Gas-works, passed 17th June, 1841.

SECT. I. That for the purpose of enabling the trustees of the Philadelphia

Gas-works to extend the said works, the mayor of the city is hereby authorized, on the requisition of the said trustees, to borrow such sums of money as they may require, not exceeding one hundred and twenty-five thousand dollars in the whole, in addition to the loans heretofore authorized, for which certificates of loan of one hundred dollars and upards, but containing no fractional part of one hundred dollars, shall be issued to the lenders; which certificates shall be transferable at the office of the Philadelphia Gas-works. The loan hereby authorized shall be redeemable on the first day of January, anno Domini one thousand eight hundred and sixty-six, and shall
41 bear such rate of interest, not exceeding five per centum per annum, as may be fixed by the said trustees, payable semi-annually at the office of the Philadelphia Gas-works, on the first days of January and July: *Provided*, That any premium received on said loans shall be placed to the credit of the sinking fund hereinafter provided for. The faith of the city, the said sinking fund, and the buildings, apparatus, fixtures, and the income and profits of the said gas-works shall be, and they are hereby, pledged for the punctual payment of the interest and for the ultimate reimbursement of the principal of all the loans made for or on account of said gas-works, as the same shall become due; and in order that provision may be made for the same, the said trustees are hereby authorized and required to set apart all the clear net profits that may remain after paying the interest on the said several loans, to constitute a sinking fund, which said sinking fund, with the interest thereon, shall be invested from time to time in the loans to said gas-works, or in the loans to the city of Philadelphia; and the said sinking fund shall be kept separate and distinct from the other funds of the said works; and the said trustees shall furnish annually, in the month of January, to the select and common councils, a statement of the amount thereof, and of the stocks in which the same shall be invested.

SECT. II. That for the further security of the loan-holders of said works, the faith of the city is hereby pledged that the prices of gas as now fixed shall not be reduced until the distribution of gas by pipes shall be completed throughout the city limits, nor at any time so as to reduce the clear profits below eight per centum per annum on the whole amount of the costs of said works, until all the loans contracted for, or that may hereafter be contracted for, shall be paid.

SECT. III. That for the further security of said loan-holders, it is hereby stipulated that the said works shall be controlled and managed by a board of trustees, elected and constituted as heretofore, who shall have the whole control and management of the said works and of the said sinking fund, and of all other funds belonging to said works; and the said trustees shall pay no part of said funds nor any part of the profit of said works into the city treasury, but shall apply and appropriate the same as directed by this ordinance, until the interest and principal of the said loans shall be fully paid as they become due to the said loan-holders.

SECT. IV. That the register of the Philadelphia Gas-works shall give bonds, with such security as shall be determined by the committee on finance, for the faithful performance of his duties and the safety of the funds entrusted to his charge.

SECT. V. That all the provisions of preceding ordinances relating to the city gas-works shall continue in full force, except so much thereof as is inconsistent with or repealed by this ordinance.

42 An ordinance providing for a final settlement with the stockholders of the Philadelphia Gas-works, passed 1st July, 1841.

SECT. I. That the trustees of the Philadelphia Gas-works be, and they are hereby, authorized and required to distribute among the several stockholders

of the said works, in proportion to the amount of stock held by them respectively, the sum of forty-eight thousand dollars in certificates of five per cent. loan, authorized by the ordinance entitled "An ordinance for the further extension and management of the Philadelphia Gas-works, passed June 17th, A. D. 1841;" the first payment of interest thereon to be made on the first day January, 1842, and such first payment of interest to be calculated from March 1st, 1841: *Provided, however,* That the several stockholders of the said gas-works, or their duly authorized agents or attorneys, in consideration thereof and of the certificates of loan heretofore authorized to be issued and received by them for the capital stock of said works, shall execute and deliver to the said trustees, for the use of the mayor, aldermen, and citizens of Philadelphia, a full and sufficient release of the said mayor, aldermen, and citizens of Philadelphia of and from all claims and demands, in law or equity, for or on account of the said gas-works, or of any funds or property in the possession of the said trustees, or of the said mayor, aldermen, and citizens, belonging thereto: *And provided also,* That if such release be not executed by all the stockholders of the said works (other than the mayor, aldermen, and citizens of Philadelphia, who assent, for the stock held by it as trustees or otherwise, to the final settlement herein proposed is hereby expressed and given,) on or before the first Monday of September next, then, and in such case, the rights of the said mayor, aldermen, and citizens, and of such stockholders as may execute and deliver such release, shall be and remain as if this ordinance had never been enacted, and such release never executed and delivered.

A supplement to an ordinance entitled "An ordinance providing for a final settlement with the stockholders of the Philadelphia Gas-works," passed 9th September, 1841.

That the time fixed by the ordinance to which this is a supplement for making and executing a release to the mayor, aldermen, and citizens of Philadelphia by the stockholders of the Philadelphia Gas-works, be, and the same is hereby, extended; and the trustees of the Philadelphia Gas-works are hereby authorized to cause to be delivered to such of the said stockholders as may have already executed the said release, or as
43 shall hereafter execute the same, their respective proportions of the sum of forty-eight thousand dollars in certificates of five per cent. city debt, as provided in the ordinance to which this is a supplement, notwithstanding the limitation therein contained that the release should, previously to such distribution, be made and executed by all of the said stockholders, or their legally authorized agents or attorneys: *Provided,* That the said stockholders, or their duly authorized agents or attorneys, at the time of receiving their respective proportions of the said sum of forty-eight thousand dollars, shall severally give a receipt therefor, expressing their consent to the terms of this ordinance.

A supplement to an ordinance entitled "An ordinance for the further extension of the Philadelphia Gas-works," passed 14th of January, 1841.—Passed 19th January, 1843.

SECT. I. That from and after the first day of January, 1843, it shall be the duty of the trustees of the gas-works to furnish to the city commissioners, monthly, a statement of the streets which have been opened for the purpose of laying down, extending, or repairing the gas pipes; and the city commissioners shall present to said trustees, quarterly, bills for the expense of the repaving or repairs thereof, the correctness of which bills shall be certified by the committee on public highways, whereupon the said trustees shall pay the amount of the same to the city treasurer.

SECT. II. That the city treasurer shall place such sums so paid by virtue of this ordinance to the credit of the committee on public highways, for the purpose of paving over gas pipes.

SECT. III. That so much of the ordinance to which this is a supplement as is inconsistent herewith be, and the same is hereby, repealed.

An ordinance to regulate the price of gas furnished to private consumers, passed 20th June, 1844.

SECT. I. That the trustees of the Philadelphia Gas-works be, and they are hereby, authorized and directed to reduce the price now charged to the private consumers of gas, from time to time, in such manner, however, that the net profits arising from the manufacture and sale of gas shall be equal to eight per cent. per annum on the whole amount of loans authorized for the purpose of said gas-works, and to the sum of twenty thousand dollars per annum in addition thereto; the said eight per cent. per annum to be exclusively appropriated and used by the trustees for the purpose of paying the interest on said loans, and, together with the present sinking fund
44 and the interest thereon, in extinguishing the principal sums of said loans; and the said twenty thousand dollars per annum to be exclusively appropriated and used in completing the said gas-works, extending the distribution of gas pipes through the city, and in making such extraordinary repairs and renewals as the contingencies of the manufacture and distribution of gas may from time to time require. The provisions of this ordinance to go into effect on the first day of September next, provided the holders of the several authorized loans for the purposes of the gas-works agree thereto. And it shall be the duty of the trustees of the Philadelphia Gas-works forthwith to cause application to be made to said holders of the gas loans for the purpose, and report the result thereof to the select and common councils: *And provided further*, That the price of gas supplied to the public lamps shall continue to be one dollar and seventy-five cents per one thousand feet, with a discount of five per cent. therefrom.

A supplement to an ordinance entitled "An ordinance to regulate the price of gas furnished to private consumers," passed 12th September, 1844.

SECT. I. That the trustees of the Philadelphia Gas-works be, and they are hereby, authorized to continue to receive the consent of the holders of the several authorized gas loans to the provisions of the ordinance to which this is a supplement, notwithstanding any limitation as to the time of giving such consent which may be contained in said ordinance.

SECT. II. That the said trustees be, and they are hereby, authorized to redeem the certificates of the gas loans which may be held by such persons or parties as have declined or may hereafter decline consenting to the provisions of the ordinance to which this is a supplement, by paying to the holders of such certificates the par value thereof, or such price above the par value thereof as the said trustees may deem just and reasonable.

SECT. III. That as a majority in number and interest of the holders of the several gas loans have consented to the provisions of the ordinance to which this is a supplement, the said trustees be, and they are hereby, authorized to reduce the price of gas furnished to private consumers, from and after the first day of September, anno Domini eighteen hundred and forty-four, according to the limitations and conditions respecting the price to be charged for gas, from time to time, as are contained in the said ordinance.

45 A further supplement to an ordinance for the construction and management of the Philadelphia Gas-works, passed 7th May, 1846.

SECT. I. That the trustees of the Philadelphia Gas-works be, and they are

hereby, authorized to retain out of the profits of the said gas-works, before making any reduction in the price of gas to private consumers, such sum, not exceeding thirty thousand dollars per annum, in lieu of the twenty thousand dollars now provided for by ordinance passed June 20th, 1844, as they may deem necessary for the gradual enlargement of the said works, the extension of the distribution of gas, and for the extraordinary repairs and renewals of the said gas-works; and that they be further authorized to apply the excess which has already accumulated in their hands, over and above the said twenty thousand dollars per annum, for the purposes aforesaid.

SECT. II. That whenever, under the operation of the several provisions for reducing the price of gas to private consumers, it shall be furnished to such consumers at the rate of two dollars per thousand cubic feet, that then and in such case all subsequent reductions in the price shall apply exclusively to and be made on the gas supplied to the city for the public lamps; and that so much of any ordinance as is hereby altered and supplied be, and the same is hereby, repealed.

A further supplement to an ordinance entitled "An ordinance for the construction and management of the Philadelphia Gas-works," passed 25th May, 1848.

SECT. I. That for the purpose of enabling the trustees of the Philadelphia Gas-works to enlarge the said works, and to extend the distribution of gas, they are hereby authorized to apply the surplus profits of the said works up to the first day of July, A. D. 1848, over the appropriations of the same heretofore made, and the further sum of $70,000, which the mayor of the city is hereby authorized to borrow, from time to time, as the said trustees may require.

SECT. II. That the certificates to be issued to the lenders of the money so borrowed shall bear an interest not exceeding the rate of six per cent. per annum, payable half-yearly, on the first day of January and the first day of July, and be redeemable on the first day of January, A. D. 1868, and be in like form and transferable in like manner with the certificates of the other loans authorized for the purpose of said gas-works.

SECT. III. That it shall be the duty of the said trustees to set apart, out of the profits of the said gas-works, the sum of ten per cent. per annum on the amount borrowed by virtue of this ordinance, for the purpose of
46 paying the interest thereon, and for reimbursing the principal thereof when the same shall be payable. And such part of the said ten per cent. per annum as may not be required for the purpose of paying the interest shall by said trustees be invested in the loans of the city or the gas loans, in the same manner and for the same purposes as the eight per cent. per annum upon the other gas loans is now directed to be invested, accumulated, and applied.

SECT. IV. That the prices hereafter to be charged for lighting the public lamps shall be one dollar and twenty-five cents per one thousand cubic feet, before any further reduction shall be made to private consumers.

A further supplement to an ordinance entitled "An ordinance for the construction and management of the Philadelphia Gas-works," passed 15th March, 1849.

SECT. I. That for the purpose of enabling the trustees of the Philadelphia Gas-works to purchase such additional iron mains, of sufficient size to distribute the gas supplied from the said works to all parts of the city in adequate quantities and with proper pressure, and to make the needful connections with the works, the mayor of the city is hereby authorized and required to borrow on the faith of the city, whenever the said trustees may

request the same, such sum of money, not exceeding one hundred thousand dollars in the whole, as may be needed for the purposes aforesaid.

SECT. II. That the certificates to be issued to the lenders of the money so borrowed shall bear an interest not exceeding six per centum per annum, payable half-yearly, on the first day of January and July, and be redeemable on the first day of January, anno Domini one thousand eight hundred and sixty-nine, and be in like form and transferable in like manner with the certificates of the other loans authorized for the purpose of said gas-works.

SECT. III. That the said trustees shall set apart, out of the profits of the said gas-works, the sum of ten per centum per annum on the amount borrowed by virtue of this ordinance, for the purpose of paying the interest thereon; and such part of the said ten per cent. per annum as may not be required for the purpose of paying said interest, and the accumulations thereof, shall be invested in the same manner and for the same purposes as the other appropriations to the sinking fund of the gas-works are now directed to be invested, accumulated, and applied.

A further supplement to an ordinance entitled "An ordinance for the construction and management of the Philadelphia Gas-works," passed 10th January, 1850.

SECT. 1. That for the purpose of enabling the trustees of the Philadelphia Gas-works to extend the same and to provide for the management thereof, the mayor of the city is hereby authorized, on the requisition of said
47 trustees, to borrow, on the faith of the city, such sums of money as they may require, not exceeding in the whole two hundred thousand dollars; and of the sum so borrowed, the amount of fifty thousand dollars shall be retained and exclusively used by the said trustees as capital for carrying on said works, and the balance shall be applied to the extension thereof.

SECT. II. That the certificates to be issued to the lenders of the money so borrowed shall bear an interest not exceeding six per centum per annum, payable half-yearly on the first day of January and July, and be redeemable on the first day of January, anno Domini eighteen hundred and seventy, and shall be in like form and transferable in like manner with the certificates of the other loans authorized for the purposes of said gas-works.

SECT. III. That the said trustees shall set apart, out of the profits of the said gas-works, the sum of ten per centum per annum on the amount borrowed by virtue of this ordinance, for the purpose of paying the interest thereon; and such part of the said ten per centum per annum as may not be required for the purpose of paying said interest, and the accumulations thereof, shall be invested in the same manner and for the same purposes as the other appropriations to the sinking fund of the said gas-works are now directed to be invested, accumulated and applied; and any premium that may be received on the said loan, together with any unappropriated profits of the said works up to the first day of January, 1851, shall be placed to the credit of the said sinking fund.

A further supplement to an ordinance entitled "An ordinance for the construction and management of the Philadelphia Gas-works," passed 20th March, 1851.

SECT. I. That for the purpose of enabling the trustees of the Philadelphia Gas-works to enlarge and extend the works, and to purchase a suitable site for the erection of any new buildings or other structures, and the purchase and setting of any conduit pipes or other apparatus, which they may deem necessary for such extensions and enlargements, the mayor of the city is hereby authorized, on the requisition of said trustees, to borrow on the faith

of the city such sum of money as they may require, not exceeding four hundred thousand dollars in the whole.

SECT. II. That the certificates to be issued to the lenders of the sum so borrowed shall bear an interest not exceeding six per cent. per annum, payable half-yearly on the first day of January and July, and be redeemable on the first day of January, A. D. eighteen hundred and seventy-two, and shall be in like form and transferable in like manner with the certificates of the other loans authorized for the purpose of said gas-works.

SECT. III. That the said trustees shall set apart, out of the profits of said gas-works, the sum of ten per cent. per annum on the amount bor-
48 rowed by virtue of this ordinance, for the purpose of paying the interest thereon, and such part of the said ten per cent. per annum as may not be required for the purpose of paying said interest, and the accumulations thereof, shall be invested in the same manner and for the same purposes as the other appropriations to the sinking fund of the said gas-works are now directed to be invested, accumulated, and applied; and any premium that may be received on the amount so borrowed shall be placed to the credit of the said sinking fund.

SECT. IV. That all the accumulated profits of the works to the first day January, A. D. eighteen hundred and fifty-one, not hitherto actually invested in stocks for the sinking fund, and all profits which may be made up to the first day of July of the present year, beyond the appropriations to the sinking fund, by continuing the present price of gas, be, and the same are hereby, appropriated to the contingent fund of the said gas-works, to be used by the trustees for the purpose of enlargement, extension, and working the said gas-works; and from and after the first day of July, A. D. 1851, the price of gas supplied to private consumers shall be reduced to two dollars per thousand cubic feet, and that any ordinance, or part of any ordinance inconsistent herewith, or supplied hereby be, and the same is hereby, repealed.

Resolution of the select and common councils, passed June 26th, 1851.

Resolved, That the site selected by the board of trustees of the Philadelphia Gas-works for the erection of new works, being two lots purchased from Margaretta Crousillat and Thomas T. Lea and others, be, and is hereby, approved.

Resolution of the select and common councils, passed December 2d, 1852.

Resolved, That the trustees of the Philadelphia Gas-works be authorized and directed to purchase for the corporation of the city of Philadelphia, from T. Fraley and others a certain lot of ground in Passyunk township, recently bought by them from the representatives of Charles Mercier, at the sum of $5,725, and to pay for the same out of any unappropriated money in the treasury of the trustees of the gas-works; and the said property when purchased shall be appropriated by the said trustees for the use and accommodation of said gas-works.

49 Resolution to authorize the trustees of the gas-works to take charge of the collection, &c., of gas used by the late district of Moyamensing, approved September 28th, 1854.

Resolved, That the trustees of the gas-works be, and are hereby, requested to take charge of the property of the city used for the purpose of measuring and distributing gas in the late district of Moyamensing, and that they be, and are hereby, authorized to collect all moneys due the city by the consumers of gas therein, and to pay the same into the city treasury until otherwise ordered.

Preamble and resolution adopted by select and common councils, at the city of Philadelphia, December 2d, 1854, approved December 7th, 1854.

Whereas the board of trustees of the West Philadelphia Gas-works having requested the city councils to take their works off their hands: Therefore—

Resolved, That they be, and they are hereby, authorized and directed to hand over to the trustees of the Philadelphia Gas-works all their effects, and the said trustees are hereby authorized to receive and take charge of the same forthwith, and that the transfer be accompanied by a statement of the affairs of the said West Philadelphia Gas-works, from the last published report to the present time, and submit the same to councils for information.

An ordinance for the regulation of the department of gas, approved March 20th, 1855.

SECT. I. That the trustees of the Philadelphia Gas-works be, and they are hereby, authorized and empowered to take charge of and exercise exclusive control over and have the management of the several gas-works, and all the property appertaining thereto, now in possession of the corporation of the city of Philadelphia, or that may hereafter be in its possession, comprising all the buildings for the manufacture and sale of gas and all the mains, services, and gas-holders belonging thereto, and also the materials on hand for the manufacture and distribution of gas, the products of such materials, the stock of gas on hand, the proceeds of the gas consumed but unsettled for, and the outstanding bills due to said gas-works, together with the books of accounts relating thereto. And immediately upon taking possession thereof, the said trustees shall make a detailed report to
50 councils of the property, real or personal, so taken possession of by them, signed by the chairman of the committee on gas and the president of the board of trustees of the Philadelphia Gas-works. And the said trustees shall have the same power to make contracts for materials, labor, and superintendence to be used and employed in said works, and to collect all debts now due or hereafter to become due to the same, as they now have under the ordinances of the mayor, aldermen, and citizens of Philadelphia relating to the gas-works built under their authority, and to enforce the same rules and regulations for the introduction and consumption of gas as are now or may be hereafter athorized by the said ordinance or any other ordinances duly enacted.

SECT. II. For the purpose of relieving taxation, the trustees and the committee on gas shall be required to assess the entire value of the gas-works of the late districts of Spring Garden, of Moyamensing, of West Philadelphia and Belmont, and the late borough of Frankford, at their fair value, not to be less than the sum of four hundred and fifty thousand dollars; and the trustees shall be required to pay over to the treasurer of the city of Philadelphia, on or before the 30th day of June, four per cent., and on or before the 31st of December, four per cent., in each and every year, upon so much of the city debt as shall be equal to the assessed value of all the said gas-works; three per cent. of which shall be applied by the said city treasurer to the payment of the semi-annual interest upon the amount of the assessed value of said works, of the city debt, or of loans of the city of Philadelphia, and one per cent. shall be immediately invested by him in the purchase of certificates of loans of the city of Philadelphia, to constitute a sinking fund for the final redemption of the above assessed valuations, until said sinking fund so created shall, with its accumulations, amount to the said assessed value of said works, when the above semi-annual payments to the city treasurer shall cease.

Sect. III. For the purpose of enabling the trustees of the Philadelphia Gas-works to carry out the various trusts heretofore confided to them by ordinances of councils, and effectually secure the objects contemplated in this ordinance, or any other ordinances which may be enacted, and to equalize the price of gas, the said trustees are hereby required and empowered so to regulate the price of gas, and the several products of its manufacture, as may from time to time be necessary, the said price to be the same in all the wards of the city supplied by the gas-works under the management of the board of trustees.

Sect. IV. To secure economy in public lighting, all the public lamps in which gas is used or consumed, furnished by the trustees of the Philadelphia Gas-works, shall be inspected by an agent or agents of the trustees, in order that all the burners may be maintained at a suitable and uniform standard; and the price chargeable for the gas consumed in such public lamps shall not exceed twenty-five dollars per annum for each public lamp, payable quarterly, on the first day of March, June, September, and December of each year.

51 Sect V. That the trustees shall be authorized to negotiate for the purchase (subject to the approval of councils) of the property of the Northern Liberties Gas Company, the Southwark and Moyamensing Gas Company, the Kensington Gas Company, the Richmond Gas Company, the Germantown Gas Company, and the Manayunk Gas Company. In case the trustees shall not be able to agree with either of the above gas companies upon such terms as shall be satisfactory to councils, the trustees of the city gas-works shall be authorized, and upon application of the citizens residing in those portions of the city lighted by the above gas companies, may extend the mains of the city gas-works in such districts or sections, and proceed to supply the public lamps and furnish the citizens thereof with gas, subject to all the conditions and regulations of this or any other ordinance duly enacted by councils, and at the same price as may be charged to citizens residing out of such districts.

Sect. VI. That anything in any other ordinance contrary to this ordinance be, and the same is hereby, repealed.

An ordinance to authorize a loan for the use of the trustees of the Philadelphia Gas-works, approved July 13th, 1855.

Sect. I. That the mayor of the city be and he is authorized to borrow, on the credit of the corporation, at a rate of interest not exceeding six per centum per annum, such sums as the trustees of the gas-works shall require, not exceeding in the whole the sum of five hundred thousand dollars; and all sums so borrowed by the authority hereof shall be, and are hereby, appropriated to the trustees of the gas-works, who shall apply the same to the enlargement and extension of the pipes and fixtures of, and to the carrying on the gas-works in their charge, to the manufacture and distribution of gas, and for the payment of debts heretofore contracted for the construction of the said works and their apparatus and fixtures.

Sect. II. The certificates for said loan shall be of the following form and description, namely:

"Certificate No. —, six per cent. loan of the city of Philadelphia, for the use of the trustees of the gas-works, issued under authority of an ordinance of the city of Philadelphia, approved , entitled 'An ordinance to authorize a loan for the use of the trustees of the Philadelphia Gas-works.'

"This certifies that there is due to , by the city of Philadelphia, dollars, with interest at the rate of six per centum per an-

num, payable half-yearly, on the first day of January and July, at the office of the city treasurer, in the city of Philadelphia; the principal to be paid at the said office on the first day of July, anno Domini eighteen hundred and eighty-five, and not before, without the consent of the owner thereof.

52 "In witness whereof, the treasurer of the city has hereunto set his hand, and caused the seal of the city of Philadelphia to be affixed, the day of , A. D. 1865, and the controller has attested the same on the said day and year."

The said certificate shall not contain any fractional parts of one hundred dollars, and shall be transferable at the office of the city treasurer.

SECT. III. If the said trustees direct, the city treasurer shall issue such certificates in such amounts and to such persons as they shall specify, without requiring the payment of any money therefor. But such trustees shall not make such direction, except such certificates are received in payment of obligations incurred by them.

SECT. IV. The said trustees shall, on or before the thirty-first day of December and the thirtieth day of June, in every year, until the said loan is paid, retain out of their receipts for the sale of gas and other products of the said gas-works the sum of four per centum on the amount of said loan, for which certificates may have been issued; of which they shall pay three per centum to the city treasurer, who shall apply the same to the payment of the interest on the said loan as the same may fall due, and to no other purpose whatever, and the remaining one per cent. the said trustees shall place to the credit of, and invest in, a sinking fund, which fund and its accumulations are hereby specifically pledged to the repayment of the said loan.

An ordinance providing for lighting, extinguishing, cleansing, and repairing the public lamps, approved February 16, 1856.

SECT. I. That, upon the passage of this ordinance, the mayor of the city of Philadelphia shall be authorized and required to contract, in accordance with the provisions of this ordinance, on behalf of the city of Philadelphia, with the trustees of the Philadelphia Gas-works, for the term of three years, commencing on the first day of January, 1856, for the lighting, extinguishing, cleansing, and doing the necessary ordinary repairs for all the public lamps now used, or which may hereafter be used, during the continuance of said contract, including the supply of materials necessary for the lighting and repairing of the same upon a scale fully equal to the present rate, at a price not exceeding the sum of thirty-eight dollars and forty-two cents annually for each of the said public lamps, and at the same rates for any additional public lamps that may be erected by the proper authorities during the continuance of said contract. Bills for the amounts due under said contract shall be presented and paid monthly, as hereinafter provided.

SECT. II. To carry this ordinance into effect the sum of two hundred and twenty-five thousand dollars are hereby appropriated for the year

53 1856, and there shall be, in the month of January of each year during the continuance of this contract, a sufficient appropriation to carry out all the provisions thereof.

SECT. III. Upon the presentation of their bills, under the contract herein authorized, each month by the said trustees to the mayor of the city, he shall forthwith be required to draw his warrant on the city treasurer in favor of the said trustees for the payment of the same, provided the correctness of the said bills is duly certified by the committee on gas.

SECT. IV. Monthly statements of the number of public lamps in use, and of the time of introduction of all new lamps, are hereby required to be fur-

nished by the trustees of the said gas-works to the committee on gas, which committee shall examine said statements and report thereon to councils.

SECT. V. Ordinances and resolutions, or parts thereof, inconsistent with or supplied by this ordinance, are hereby repealed.

An ordinance for the further extension of the Philadelphia Gas-works, approved May 10, A. D. 1858.

SECTION I. The select and common councils of the city of Philadelphia do ordain that the trustees of the Philadelphia Gas-works be, and they are hereby, authorized to agree for a conveyance to the city of Philadelphia in trust, under sufficient covenants and deeds of conveyance, securing the rights and interests of the parties to said deeds, the works, pipes, and meters, and all other property, both real and personal, used for making, storing, distributing, and selling gas belonging to any or all of the several gas companies hereinafter named, who shall consent to convey and transfer the same in such manner that, upon the fulfilment of all the terms and conditions of said trust, the property conveyed in trust may become vested absolutely in the city of Philadelphia, clear of all incumbrances or liabilities, other than any rent-charge in the nature of ground rent to which said real estate is now subject: *And provided further*, That said conveyance shall be effected without the issue of any bonds or other obligations in the nature of a bond, whereby the city corporation or its property, or the gas-works and property now held by the said trustees, may be involved in any debt or liability on account of said conveyances.

SECT. II An assessed valuation shall be fixed in said deeds of conveyance to said works and other property, which shall not be greater than the sums following, with such additions as will fairly represent the proper cost of any pipes or other apparatus that may have been added to said works since the first day of January, A. D. 1857:

54	The Germantown Gas Company	$85,000 00
	The Richmond Gas Company	16,500 00
	The Kensington Gas Company	90,000 00
	The Northern Liberties Gas Company	360,000 00
	The Southwark and Moyamensing Gas Company	109,000 00
	The Manayunk Gas Company	65,000 00
		725,500 00

SECT. III. In order to provide for the payment of any moneys made payable by and under the said deeds of trust, the trustees of the gas-works are hereby authorized to set apart out of the proceeds of the sale of gas, semi-annually, on the first of January and July, a sum equal to four per cent. on the aforesaid assessed values, and to apply the same to pay the interest thereon, and, further, to the accumulation of a sinking fund for the liquidation of the principal. The said sinking fund to be kept separate and distinct from the sinking fund heretofore authorized, and to be invested and secured in such manner and devoted to such uses, beneficial to the grantors, as may be agreed on and directed in said deeds: *Provided*, That it shall not be lawful for the trustees of the gas-works to raise the price of gas to private consumers to a higher rate than two dollars and twenty-five cents per thousand in any portion of the city of Philadelphia in which the present price of gas does not exceed that rate.

SECT. IV. Upon taking possession of the works, pipes, &c., conveyed under authority of this ordinance, it shall be the duty of the trustees of the gas-works to make a detailed report to councils of the property, real and per-

sonal, so conveyed, and its assessed value; and the said trustees shall have, with respect to said works, pipes, &c., the same powers and authority in all respects as they now have, or hereafter may have, with respect to the works already intrusted to their care.

SECT. V. For the purpose of enabling the trustees of the Philadelphia Gas-works to carry out the various trusts confided to them by ordinances of councils, and to increase, extend, locate, and improve in the most economical manner the pipes, meters, and works under their care, so as to meet the increasing wants of the citizens for gas-light, the said trustees are hereby authorized and required so to regulate the price of gas, and the several products of its manufacture, as may from time to time be necessary, the said price of gas to be the same in all the wards of the city supplied by the gas-works under the control of the trustees, unless otherwise ordered by councils: *Provided*, That the said trustees shall not be required to make more extensions or additions than the contingent fund raised out of the net earnings of the works will pay for, nor in any one year to a greater extent than five per cent. of the existing pipes and meters: *And provided further*, Said trustees shall not be allowed to sell any portion of the real estate acquired by this ordinance without the consent of councils.

SECT. VI. Anything in any other ordinance contrary to this ordinance is hereby repealed.

55 An ordinance providing for lighting, extinguishing, cleansing, and repairing the public lamps, approved January 4, 1859.

SECTION I. The select and common councils of the city of Philadelphia do ordain that the trustees of the Philadelphia Gas-works be, and they are hereby, authorized to continue to light, extinguish, cleanse, and repair the public lamps, under the supervision and direction of the committee on gas-works, in accordance with the existing contract, until some other provision is made therefor by ordinance of councils.

An ordinance to create a loan for the further extension of the Philadelphia Gas-works, approved March 26, 1859.

SECTION I. The select and common councils of the city of Philadelphia do ordain that for the purpose of enabling the trustees of the Philadelphia Gas-works to enlarge and extend said works, especially by laying down a greater extent of mains for the distribution of gas in adequate quantities, and with proper pressure, so as to meet the increasing wants of the citizens for gas-light, the mayor of the city be, and he is hereby, authorized to borrow on the credit of the corporation, at a rate of interest not exceeding six per centum per annum, such sums of money as the trustees of the gas-works may require, not exceeding five hundred thousand dollars; and, without requiring the payment of any money therefor, the city treasurer is hereby empowered and directed, on the requisition of the trustees of the Philadelphia Gas-works, to issue certificates of loan of the city of Philadelphia, in such amounts and to such parties as they shall designate, not exceeding said sum, which shall be applied to the payment of obligations that may hereafter be incurred in the enlargement and increase of the works, mains, service pipes, meters, and fixtures, and to carry on the gas-works in their charge, and in the manufacture and distribution of gas, and to refund to citizens the amount of money advanced by them (over the usual rate of charge) for the laying of gas pipes and introduction of service pipes, meters, and their appurtenances, into the premises; and any premium that may be received by the said trustees on the amount so borrowed shall be placed to the credit of the contingent fund of said gas-works, to be applied exclusively to the

introduction of meters and service pipes: *Provided*, That at least one half of the money raised under that ordinance shall be expended for mains, service pipes, meters, and their appurtenances.

SECT. II. The certificates of said loan shall be of the following form and description, namely:

56 "Gas loan No. 10. Certificate No. —, six per cent loan of the city of Philadelphia, for the use of the trustees of the Philadelphia Gas-works, issued under the authority of an ordinance of the city of Philadelphia, approved entitled 'An ordinance to create a loan for the further extension of the Philadelphia Gas-works.'

"This certifies that there is due to by the city of Philadelphia dollars, with interest at the rate of six per centum per annum, payable half-yearly, on the first days of January and July, at the office of the city treasurer, in the city of Philadelphia; the principal to be paid at the said office on the first day of July, anno Domini eighteen hundred and eighty-three, and not before, without the consent of the owner thereof.

"In witness whereof, the treasurer of the city has hereunto set his hand and caused the seal of the city of Philadelphia to be affixed the day of , 18 , and the controller has attested the same, on the said day and year.

—— ——, *City Treasurer.*

"Attest. —— ——, *City Controller.*"

The said certificates shall not contain any fractional parts of one hundred dollars, and shall be transferable at the office of the city treasurer.

SECT. 3. The said trustees shall, on or before the thirty-first day of December and the thirtieth day of June, in every year, until the said loan is paid, retain out of their receipts for the sale of gas and other products of the said gas-works the sum of four per centum on the amount of said loan, for which certificates may have been issued, which they shall pay to the city treasurer, who shall apply three per centum thereof to the payment of the interest on the said loan, as the same may fall due, and to no other purpose whatever; and the remaining one per centum shall be paid over by said treasurer to the commissioners of the sinking fund, who shall invest the same and its accumulations in the loans to the said gas-works, or in the other loans of the city of Philadelphia, as a sinking fund, which is hereby specifically pledged to the repayment of said loan; and any surplus remaining after the payment of said loan shall be applied by the commissioners of the sinking fund towards the extinguishment of the other loans to said gas-works, if any; otherwise, of the funded debt of the city of Philadelphia: *Provided*, That it shall not be lawful for said trustees to erect, or cause to be erected, any dwelling house or houses, without first having the consent of councils.

57 An ordinance for the purchase of the works of the Kensington Gas Company, under the provisions of the fifth section of the act of assembly incorporating the said company.

SECT. 1. That the trustees of the Philadelphia Gas-works be, and they are hereby, authorized to demand and receive, on behalf of the city of Philadelphia, a conveyance from the Kensington Gas Company of the works, pipes, and other property of the said Kensington Gas Company, and to hold the same, with the powers, restrictions, and limitations prescribed by an ordinance entitled "An ordinance for the further extension of the Philadelphia Gas-works," approved May 10, 1858.

SECT. II. That the trustees aforesaid be, and they are hereby, authorized

to tender and pay to the said Kensington Gas Company the price of said works, as provided in the fifth section of the act of assembly incorporating the said Kensington Gas Company, out of any moneys in the trust not otherwise appropriated; and if in the judgment of the said trustees it may be necessary to provide for such payment by a pledge of the works and other property received under this ordinance, they are hereby authorized to pledge the same to parties who may advance the money for said payment, on the same terms as they have pledged the works of the gas companies who have conveyed their works to the city under the provisions of the aforesaid ordinance of the tenth day of May, eighteen hundred and fifty-eight.

A supplement to an ordinance entitled "An ordinance for the further extension of the Philadelphia Gas-works," approved May 10th, 1858.

SECT. I. That so much of the provisions of the ordinance to which this is a supplement as relates to the conveyance of the works, pipes, etc., of the Northern Liberties Gas Company to the city of Philadelphia, on the terms and conditions thereof, be, and the same is hereby, repealed.

58 An ordinance to create a loan for the further extension of the Philadelphia Gas-works.

SECT. I. That for the purpose of enabling the trustees of the Philadelphia Gas-works to enlarge and extend said works, so as to meet the increasing wants of the citizens for gas-light, the mayor of the city be, and he is hereby, authorized to borrow on the credit of the corporation, at a rate of interest not exceeding six per centum per annum, such sums of money as the trustees of the gas-works may require, not exceeding five hundred thousand dollars; and, without requiring the payment of any money therefor, the city treasurer is hereby empowered and directed, on the requisition of the trustees of the Philadelphia Gas-works, to issue certificates of loan of the city of Philadelphia, in such amounts and to such parties as they shall designate, not exceeding said sum, which shall be applied to the payment of obligations that may hereafter be incurred in the enlargement and increase of the works, mains, service pipes, meters, and fixtures, and to carry on the gas-works in their charge, and in the manufacture and distribution of gas; and any premium that may be received by the said trustees on the amount so borrowed shall be placed to the credit of the contingent fund of said gas-works: *Provided*, That at least one-half of the money raised under that ordinance shall be expended for mains, service pipes, meters, and appurtenances.

SECT. II. The certificates of said loan shall be of the following form and description, namely:

"Gas loan No. 11. Certificate No. —, six per cent. loan of the city of Philadelphia, for the use of the trustees of the Philadelphia Gas-works, issued under the authority of an ordinance of the city of Philadelphia, approved , entitled 'An ordinance to create a loan for the further extension of the Philadelphia Gas-works.'

"This certifies that there is due to by the city of Philadelphia dollars, with interest at the rate of six per centum per annum, payable half-yearly, on the first days of January and July, at the office of the city treasurer, in the city of Philadelphia; the principal to be paid at the said office on the first day of July, anno Domini eighteen hundred and eighty-four, and not before, without the consent of the owner thereof.

In witness whereof, the treasurer of the city has hereunto set his hand and caused the seal of the city of Philadelphia to be affixed the day of , 18 , and the controller has attested the same on the said day and year.

——— ———, *City Controller.*

"Attest. ——— ———, *City Treasurer.*"

59 The said certificates shall not contain any fractional parts of one hundred dollars, and shall be transferable at the offices of the city treasurer.

SECT. III. That the said trustees shall, on or before the thirty-first day of December and the thirtieth day of June, in every year, until the said loan is paid, retain out of their receipt for the sale of gas and other products of the said gas-works the sum of four per centum on the amount of said loan, for which certificates may have been issued, which they shall pay to the city treasurer, who shall apply three per centum thereof to the payment of the interest on the said loan, as the same may fall due, and to no other purpose whatever; and the remaining one per centum shall be paid over by the said treasurer to commissioners of the sinking fund, who shall invest the same and its accumulations in the loans to the said gas-works or in the other loans of the city of Philadelphia, as a sinking fund, which is hereby specifically pledged to the repayment of said loan; and any surplus remaining after the payment of said loan shall be applied by the commissioners of the sinking fund toward the extinguishment of the other loans to the said gas-works, if any; otherwise, of the funded debt of the city of Philadelphia.

60 *By-laws of the board of trustees of the Philadelphia Gas-works.*

1. The stated meetings of this board shall be held on the second and fourth Fridays of each month. The hours of meeting shall be in the months of November, December, January, and February, 7 o'clock p. m.; in March, April, September, and October, 7½ o'clock p. m.; and in May, June, July, and August, 8 o'clock p. m., unless otherwise ordered.

2. Special meetings shall be called by the president, or, in his absence, by the registrar, on the request, in writing, of three members, and also at such times as the president in his discretion may deem expedient. The object of the meeting shall be stated in the notice, and no other business shall be transacted at such meeting unless it be specified that the meeting is called for the dispatch of business generally.

3. Precisely at the appointed time the president shall take the chair and call the members to order. In his absence the members present shall appoint a president pro tem. If a quorum of members be not present
61 within half an hour after the time appointed for the meeting, the members present may adjourn to such time and place as the majority of them shall deem proper; of which time and place due notice shall be given to all the members by the registrar.

4. The following order of business shall be observed at the stated meetings of the board: 1st. Roll-call. 2d. Reading the minutes of the preceding meeting. 3d. Reading communications addressed to the board. 4th. Reports of standing committees. 5th. Reports of special committees. 6th. Deferred and unfinished business. 7th. New business.

5. All committees shall be appointed by the president, unless otherwise specially ordered. At the stated meeting on the fourth Friday of each month a committee of three shall be appointed to serve for one month, who shall audit and settle the accounts of the engineer and cashier. Said committee shall be constituted by taking the members of the board in such rotation that one new member shall be added to the committee each month, the first-named member for the preceding month retiring.

6. The yeas and nays upon any question shall be called and entered upon the minutes at the request of any member.

7. All reports of committees shall be in writing, and no report shall be received unless it be signed by a majority of the members of the committee, provided that dissenting members shall have the right of presenting their views in writing.

8. All questions of order shall be decided by the president, and in case of an appeal from his decision the board shall decide the question without debate.

9. The registrar shall, by messenger, summon the meetings of the board and committees by written or printed notices the day previous to the meeting, and attend at such meetings and act as secretary thereof. He
62 shall furnish the chairman of each committee with a notice of his appointment, a list of the members of the committee, a copy of the resolution under which they are appointed, and with such papers or documents as may be referred to them or as the committee may require.

10. All contracts shall be made in writing.

11. All resolutions offered by any member of the board shall be in writing, and when a member speaks of any question before the board he shall rise and address the chair.

12. No member of the board of trustees shall be accepted as security for any persons in its employment.

13. All the works, including their extension and repairs, the manufacture of gas, the laying of mains, and the introduction of service pipes and meters, shall be under the direction of the chief engineer, subject to the control of the board.

14. There shall be such number of assistant engineers as the board of trustees shall from time to time deem necessary, who shall receive their instructions from and account to the chief engineer for the discharge of their duties.

15. The chief engineer shall report at least once in each year, or oftener if required by the board of trustees, the condition of the various departments of the works under his charge. He shall examine and certify all bills and accounts, and report the same to the board of trustees for payment. He shall also, at each stated meeting, furnish the board with a detailed statement of the disbursement of the money appropriated to his use, and exhibit proper vouchers therefor, together with an estimate of the amount required for the various departments, and give security for the proper application of the funds appropriated to his use.

16. He shall attend the meetings of the board of trustees and of the standing committee for the purpose of advice and counsel.

17. The chief engineer shall report to the board of trustees any neglect of duty or violation of orders on the part of any officer in any depart-
63 ment under his care, and have authority to suspend from duty any such officer, if in his judgment the interests of the works require it, until the board may take action in the case, and also to employ and discharge all persons engaged in the works who are not elected or appointed by the board of trustees.

18. The department of finance shall be under the direction of an officer who shall be known as the cashier of the Philadelphia Gas-works.

19. It shall be his duty, subject to the control of the trustees, to receive all moneys arising from the sale of loans, gas, or other products of the works, and of all materials of every description, and, in conjunction with the president, have the custody of all the securities belonging to the trust. He shall also give sufficient security for the faithful keeping of the funds and securities entrusted to his care, and his official bond shall be in the exclusive possession of the president.

20 All money received by him shall be deposited daily in such bank or banks as the trustees shall direct, in the name and to the credit of the trustees of the Philadelphia Gas-works: *Provided*, He shall not be required to deposit a less sum than one hundred dollars, nor any cash received by him within an hour before the closing of the bank.

21. He shall also visit, at least monthly, and carefully inspect the accounts of the various officers in which payments are made on account of gas and other products. He shall have the supervision of the reports of the inspectors of meters and of the inspectors of fittings. Connected with his department there shall be a clerk who shall be known as the registrar, who shall, under his direction, keep the accounts.

22. He shall, in conjunction with the chief engineer, so arrange the finances as to meet the engagements of the trustees as they may become due and payable. He shall also submit to the board at each stated meeting
64 an account of his cash receipts and payments from the date of their last meeting, examined by the standing committee; and at the first stated meeting in each month submit an estimate of the probable receipts for that month.

23. He shall have the entire supervision and direction of all the clerks and other persons employed in the department of finance, and be charged with the payment of all salaries and wages, and with the interest on loans; certify all bills or accounts authorized to be contracted by him; attend the meetings of the board of trustees and the standing committees thereof; report to the board any neglect of duty or violation of orders on the part of any person employed in his department, with power to suspend any officer or other person employed in the department of finance if, in his judgment, it shall be necessary, until proper action shall be taken thereon by the board of trustees.

24. All payments shall be made by checks, signed by the president of the board of trustees and cashier.

25. Every clerk or other person entrusted with the receipt and disbursement of money shall give such securities to the board of trustees as they may determine, for the faithful performance of his duties.

26. Every clerk or other person entrusted with the collection of money belonging to the gas-works shall pay it over to the cashier at the office of the Philadelphia Gas-works daily.

27. All persons employed by the board of trustees, except mechanics and laborers, shall be elected annually by a vote of the majority of the trustees present at the first stated meeting of the board in March of each year, or as early thereafter as practicable; they shall continue in office until the first day of April of the year next following, or until their successors shall be elected, unless sooner dismissed from office by a vote of the majority of the whole number of the board of trustees.

In addition to the chief engineer, cashier, registrar, and assistant
65 engineers, the name, number, duties and compensation of the officers, clerks, and other persons to be so elected shall be fixed by a resolution of the trustees, from time to time, and they shall give, severally, such security as the trustees may from time to time direct.

28. No new by-law, rule, or regulation shall be adopted, and no alteration shall at any time be made in the existing by-laws, rules, or regulations, unless the same shall have been submitted at one stated meeting, and approved of by a majority of the whole number of trustees at the next subsequent stated meeting, and the registrar shall give notice previous to such next meeting that amendments to the by-laws, rules, or regulations will be acted on.

The following resolution was passed:

JANUARY 13TH, 1860.

Resolved, That in all cases not provided for by the by-laws, the board shall be governed by the rules laid down in "Matthias's Manual."

The following resolution was passed:

NOVEMBER 22D, 1861.

Resolved, That the president shall appoint a quarterly standing committee of three members, to be entitled the committee on works. It shall be the duty of the said committee to visit the works from time to time, and make report whenever it shall be deemed expedient. The committee shall meet at the call of the chairman, or upon the application of any two members to the registrar.

66 *List of payments made to defendant.*

No.	When paid.	Amount.	Interest to Jan'y 1, 1864.	Total.
45	Jan. 24, 1863.....	$1, 836 90	$104 70	$1, 941 60
49	Feb'ry 14th, 1863.....	6, 520 46	348 85	6, 869 31
56	M'ch 23d, 1863.....	2, 773 62	131 30	2, 904 92
59	Ap'l 21st, 1863.....	2, 405 75	102 25	2, 508 00
64	May 27th, 1863	2, 420 31	88 33	2, 508 64
65	June 17th, 1863.....	2, 032 42	67 05	2, 099 47
69	July 25d, 1863.....	1, 678 01	45 31	1, 723 32
77	Sept. 15th, 1863.....	1, 371 57	24 70	1, 396 27
90	Nov'r 16th, 1863.....	4, 886 58	37 46	4, 924 04
		25, 925 62	949 95	26, 875 57
102	Decemb'r 31st, 1863.....	1, 866 45	.....	1, 866 45
	Total.....	....	.....	28, 742 02

67 Payments made to J. H. Diehl, collector of public revenue, under protest that the same is not legally due, for gas used in the public lamps of the city of Philadelphia, in—

Sept., 1862, paid Jan'y 24, '63.....	$1, 836 90
Oct, 1862, $1,977 84; Nov., 1862, $2,180 00; Dec., 1862, $2,362 62, paid Feb'y 14, '63.....	6, 520 46
Jan'y, 1863, p'd March 23, '63	2, 773 62
Feb'y, 1863, p'd Ap'l 21, '63.....	2, 405 75
March, 1863, p'd May 27, '63.....	2, 420 31
April, 1863, p'd June 17, '63.....	2, 032 42
May, 1863, p'd July 23, '63.....	1, 678 01
June, 1863, p'd Sept. 15, '63.....	1, 371 57
July, August, and September, 1863, p'd Nov'r 16, '63.....	4, 886 58
October, 1863, p'd Dec. 31, '63.....	1, 866 45
	27, 792 07

No. 45. $1,836 90. JANUARY 24TH, 1863.

Received from the trustees of the Philadelphia Gas-works eighteen hundred and thirty-six 90-100 dollars, being the consumption of gas in the public lamps for the month of September, paid under protest that the same is not legally due.

(Signed) JOHN H. DIEHL, *Collector*.

68 No. 49. $6,520 46. FEB'Y 14TH, 1863.

Received from the trustees of the Philadelphia Gas-works sixty-five hundred and twenty 46-100 dollars, being the U. S. tax on the estimated consumption of gas in the public lamps of the city of Philadelphia for the months of Oct., Nov., and Dec'r, 1862, paid under protest that the same is not legally due, the word estimated inserted before signing.

(Signed) JOHN H. DIEHL, *Collector.*

No. 56. $10,141 70. MARCH 23D, 1863.

Received from the trustees of the Philadelphia Gas-works ten thousand one hundred and fourteen 70-100 dollars, of which amount $2,773 62-100 is paid under protest that the same is not legally due, the whole being on account of U. S. tax on gas, delivered to public and private consumers in January.

(Signed) JOHN H. DIEHL, *Collector.*

No. 59. APRIL 21ST, 1863.

Received from the trustees of the Philadelphia Gas-works ninety-eight hundred and eighty-five 32-100 dollars, of which amount twenty-four hundred and five 32-100 dollars is paid under protest that the same is not legally due, the whole being on account of U. S. tax on gas delivered to public and private consumers in Feb'y last.

(Signed) WM. BLACKBURNE, *Dept. Collector.*

69 No. 64. $12,000. MAY 27TH, 1863.

Received from the trustees of the Philadelphia Gas-works twelve thousand dollars, of which amount $2,420 31-100 is paid under protest that the same is not legally due, the whole being on acc't of U. S. tax on gas delivered to private and public consumers in March last.

(Signed) WM. BLACKBURNE, *Deputy Collector*

No. 65. $3,100. JUNE 17TH, 1863.

Received from the trustees of the Philadelphia Gas-works eighty-one hundred dollars, of which amount $2,032 42-100 is paid under protest that the same is not legally due, the whole being on account of U. S. tax on gas delivered to public and private consumers in April last.

(Signed) JOHN H. DIEHL, *Collector.*

No. 69. $6,000. JULY 23D, 1863.

Received of the trustees of the Philadelphia Gas-works six thousand dollars, of which amount $1,678 1-100 is paid under protest that the same is not legally due, the whole being on acc't of U. S. tax on gas delivered to private consumers and to the city of Phila., in May last.

(Signed) JOHN H. DIEHL, *Collector.*

70 No. 77. $10,756 88. SEPT'R 15TH, 1863.

Received from the trustees of the Philadelphia Gas-works ten thousand seven hundred and fifty-six 88-100 dollars, of which amount $1,371 57-100 dollars is paid under protest that the same is not legally due, the whole being on account of U. S. tax on gas delivered to public and private consumers.

(Signed) WM. L. McFADDEN, *Dep'y Coll'r.*

No. 90. Nov. 16, 1863.

Received from the trustees of the Philadelphia Gas-works $12,312 79-100,

of which amount $4,886 58-100, being the estimated amount of gas used in the public lamps during the months of July, August, and September is paid under protest that the same is not legally due, the whole being on account of U. S. tax on gas delivered to public and private consumers.

WM. L. McFADDEN, *Dep'y Coll'r.*

No. 102. DEC. 31ST, 1863.

Received from the trustees of the Philadelphia Gas-works five thousand dollars, of which am't $1,866 45-100, being the estimated am't of gas used in the public lamps for month of October, is paid under protest that the same is not legally due, the whole being on account of gas delivered to private and public lighting. JOHN H. DIEHL, *Collector.*

71 OFFICE FOR THE COLLECTION OF INTERNAL REVENUE
FOR THE SECOND COLLECTION DISTRICT OF PENNSYLVANIA,
Philadelphia, December 2*d*, 1862.

William Rotch Wistar, esq., president board of trustees, Philadelphia Gas-works:

DEAR SIR: I have received from the United States assessor of internal revenue for the second assessment district of this State a return made out by him of gas sold by the Philadelphia Gas-works in the month of September last, the tax on which amounts to $3,540 27-100.

The receipt of this return thus made by the assessor indicates a refusal or failure on the part of the gas-works to comply with the provisions of the U. S. excise tax law, and it becomes my duty to institute such proceedings as are prescribed in the law. Before taking any action in the matter I desire to call your attention to the matter in the hope that you will adopt such means as will remove all cause of difficulty.

Very respectfully, your ob'd't serv't,
JOHN H. DIEHL, *Collector of Internal Revenue.*

72 OFFICE FOR THE COLLECTION OF INTERNAL REVENUE
FOR THE SECOND COLLECTION DISTRICT OF PENNSYLVANIA,
Philadelphia, December 6, 1862.

To the trustees of the Philadelphia Gas-works:

GENTLEMEN: I hereby demand of you the payment of the sum of thirty-five hundred and forty 27-100 dollars, amount of excise tax on gas manufactured and sold by you for the month of September, A. D. 1862. You will find below a memorandum of the number of feet of gas returned by the assessor to me as having been manufactured and sold by you in the month of September, 1862, with a statement of the amount assessed thereon, as above stated. Unless the above sum of thirty-five hundred and forty 27-100 dollars is paid to me within ten days from this date, I shall proceed to collect the amount thereof according to law.

Very respectfully,
JOHN H. DIEHL, *Collector for 2d Dist. of Penna.*

Gas returned as manufactured and sold or delivered from 1st Sept. to 30 September, 1862, inclusive: 23,601,774 feet, at 15c. per M ft., $3,540 27-100.

73 OFFICE FOR THE COLLECTION OF INTERNAL REVENUE
FOR THE SECOND COLLECTION DISTRICT OF PENNSYLVANIA,
Philadelphia, January 15, 1863.

William Rotch Wistar, esq., president of the board of trustees of the Philadelphia Gas-works:

DEAR SIR: I have consulted my attorney in reference to the matter of the

United States tax due by the Philadelphia Gas-works, and I am advised by him that I am not justified under the law in allowing payment to be further postponed. I therefore desire to say to you that unless payment of said tax is made to me on or before Tuesday next, the 20th inst, I will be compelled, however unpleasant it may be, to proceed and collect the same according to law.

Very respectfully, yours, JOHN H. DIEHL, *Collector.*

74 OFFICE FOR THE COLLECTION OF INTERNAL REVENUE
FOR THE SECOND COLLECTION DISTRICT OF PENNSYLVANIA,
Philadelphia, January 24, 1863.

To the trustees of the Philadelphia Gas-works:

GENTLEMEN: I hereby demand of you payment of the sum of four thousand six hundred and fifty 2-100 dollars, amount of excise tax on gas manufactured and sold by you for the month of October, A. D. 1862 You will find below a memorandum of the number of feet of gas returned by the assessor to me as having been manufactured and sold by you in the month of October, 1862, with a statement of the amount assessed thereon, as above stated. Unless the above sum of four thousand six hundred and fifty 2-100 dollars is paid to me within ten days from this date, I shall proceed to collect the same according to law.

Very respectfully,
JOHN H. DIEHL, *Collector 2d District Penna.*

Gas returned as manufactured and sold or delivered from 1st October to 31st October, 1862: 31,000,176 feet, at 15c. per 1,000 feet, $4,650 2-100.

75 OFFICE FOR THE COLLECTION OF INTERNAL REVENUE
FOR THE SECOND COLLECTION DISTRICT OF PENNSYLVANIA,
Philadelphia, January 24th, 1863.

DEAR SIR: Can I obtain from you by 12 o'clock to-day a list of property belonging to the gas-works, about which I spoke when I last had the pleasure of seeing you?

Very truly, yours, JOHN H. DIEHL.

WM. ROTCH WISTAR, Esq.

OFFICE OF THE COLLECTION OF INTERNAL REVENUE
FOR THE SECOND COLLECTION DISTRICT OF PENNSYLVANIA,
Philadelphia, January 24th, 1863.

To the trustees of the Philadelphia Gas-works:

GENTLEMEN: I hereby demand of you the payment of the sum of ten thousand two hundred and eighty-eight 33-100 dollars, amount of excise tax on gas manufactured and sold by you for the month of November, A. D. 1862. Annexed is a memorandum of the same as returned to me by the assessor. Unless the above sum of ten thousand two hundred and eighty-eight 33-100 dollars is paid to me within ten days from this date, I shall proceed to collect the same according to law.

Very respectfully,
JOHN H. DIEHL, *Collector 2d Dis. Penna.*

68,588,879 feet, at 15c. per 1,000 feet, $10,288 33-100.

76 OFFICE FOR THE COLLECTION OF INTERNAL REVENUE
FOR THE SECOND COLLETION DISTRICT OF PENNSYLVANIA,
Philadelphia, Jan. 24, 1863.

To the Trustees of the Philadelphia Gas-works:

GENTLEMEN: I hereby demand of you the payment of the sum of eleven

thousand dollars amount of excise tax for gas manufactured and sold by the Philadelphia Gas-works, for the month of December, A. D. 1862, as per return made to me by the assessor. Unless the above sum of eleven thousand dollars is paid to me within ten days from this date, I shall proceed to collect the same according to law.

Very respectfully,

JOHN H. DIEHL, *Collector 2d Dis. Penn.*

73,333,333 feet, at 15 c. per M. feet, $11,000.

77 OFFICE OF THE COLLECTION OF INTERNAL REVENUE
FOR THE SECOND COLLECTION DISTRICT OF PENNSYLVANIA,
SW. cor. Walnut and Third Streets, Philadelphia, Feb'ry 17th, 1863.

DEAR SIRS: You are respectfully notified that the United States excise, tax, for which you are liable for the month of January, 1863, as per return made to the assessor, say $10,114 70-100, is now due and payable at this office, between the hours of 9 a. m. and 3 p. m. Unless said tax is paid to me within ten days from this date, the law compels me to institute proceedings for its collection.

Very respectfully,

JOHN H DIEHL, *Collector.*

TO THE TRUSTEES OF THE PHILADELPHIA GAS-WORKS.

And afterwards, to wit, on the ninth day of December, the said plaintiff's, by their attorneys, come into court and exhibit their assignment of errors, which being filed is in the words and of the tenor following, to wit:

78 *Assignment of errors.*

I. The learned court erred in declining to charge the jury as requested in the plaintiffs' first point, which was, "that if the jury believes the evidence in the cause, they may find a verdict for plaintiffs for the amount claimed."

II. The learned court erred in declining to charge the jury as requested in the plaintiffs' second point, which was, "that if the jury believe that the plaintiffs' paid to defendant the sum claimed in this case under protest and under duress of threats of seizure of their property they are entitled to recover back the sums so paid."

III. The learned court erred in declining to charge the jury as requested in the plaintiffs' third point, which was, "that the provisions of the acts of Congress imposing a tax on gas do not apply to gas manufactured and used by the municipal corporation (plaintiffs) for public lamps under their corporate duty to light the public highways of the city of Philadelphia."

IV. The learned court erred in declining to charge the jury as requested in the plaintiffs' fourth point, which was, "that if the jury believe
79 from the evidence that the gas on which the taxes have been paid to the defendant under protest was not manufactured or made and sold or removed for consumption or for delivery to others than agents for the plaintiffs, the plaintiffs are entitled to recover back the taxes so paid."

V. The learned court erred in declining to charge the jury as requested in the plaintiffs' fifth point, which was, "that if the jury believe from the evidence that the gas on which the taxes have been paid to the defendant under protest was manufactured by the plaintiffs, not for sale, but for their own use and consumption, the plaintiffs are entitled to recover back the taxes so paid."

VI. The learned court erred in charging the jury "that the tax was properly assessed, and that it was the duty of the jury to find for the defendant."

VII. The learned court erred in charging the jury "that it was the duty of the jury to find for the defendant."

RICHARD LUDLOW,
WILLIAM L. HIRST,
F. CARROLL BREWSTER,
Pro Pl'ffs.

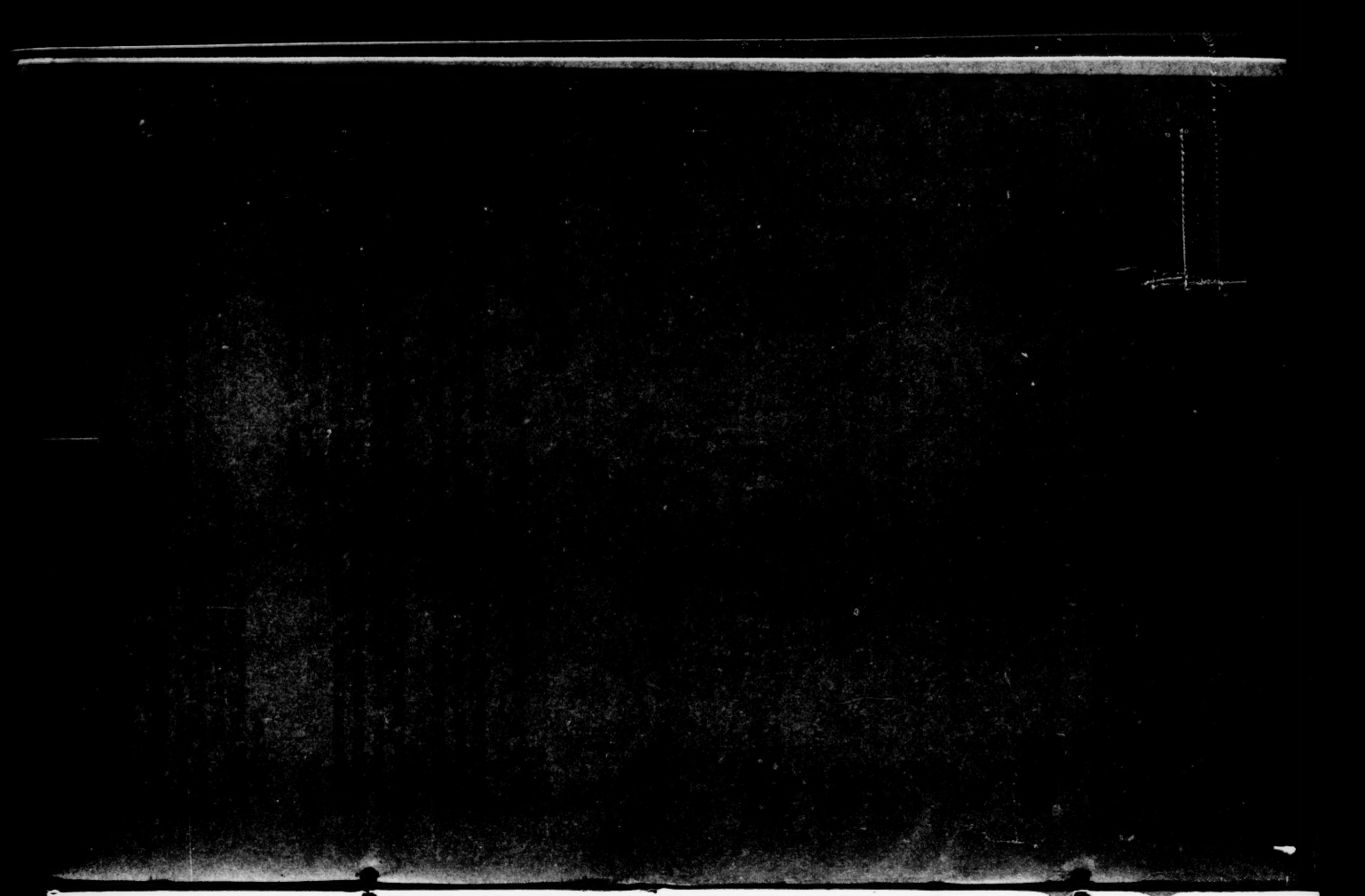
80 THE UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, sct:

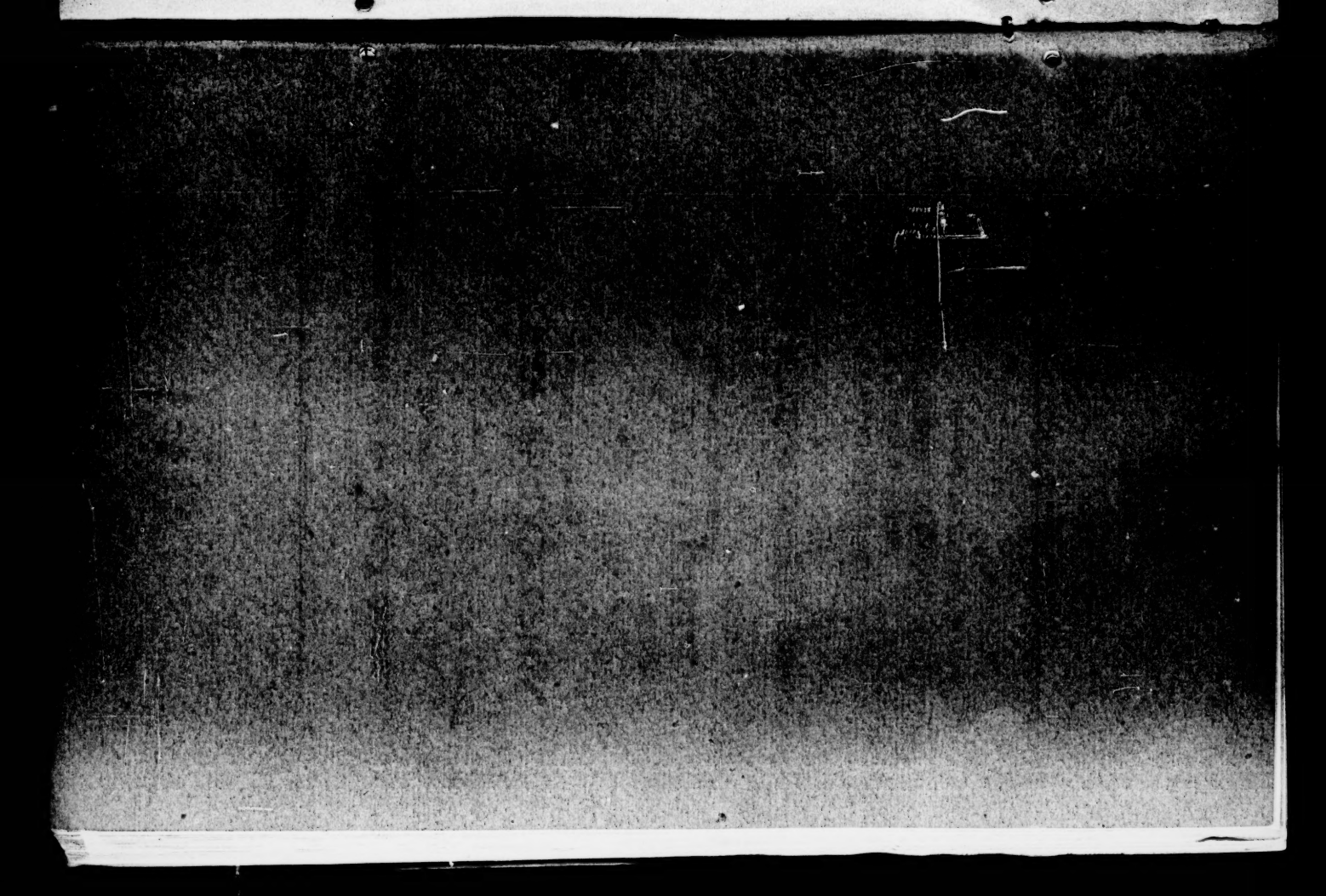
I certify the foreging to be a true and faithful copy of the record and proceedings of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, in a certain suit therein lately depending, wherein the city of Philadelphia is the plaintiff, and John H. Diehl is the defendant.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this thirteenth day of December, A. D. 1864, and in the eighty-ninth year of the independence of the said United States.

[SEAL.] W. GRIER HIBLER, *pro Clerk C. C. U. S.*

Filed January 23, 1865.





Supreme Court of the United States.

No. 247.

THE CITY OF PHILADELPHIA,

PLAINTIFF IN ERROR,

vs.

JOHN H. DIEHL,

DEFENDANT IN ERROR.

PAPER BOOK OF THE PLAINTIFF IN ERROR.

RICHARD LUDLOW,
WILLIAM L. HIRST,
JAMES LYND,
Attorneys for Plaintiff in Error.

King & Baird, Printers, 607 Sansom Street, Philadelphia.

History of the Case.

The following are the facts as exhibited by this record:

The defendant, being a collector of the internal revenue of the United States, in his official capacity, demanded payment from the plaintiffs of the sums of money hereinafter mentioned, for the excise tax on the gas used in lighting the public lamps of the City of Philadelphia, during the months of September, October, November, and December, of the year 1862, and the months of January, February, March, April, May, and June, of the year 1863.

To enforce the collection of this tax, the defendant threatened to seize and sell the property of the plaintiffs, and the plaintiffs, to avoid the seizure of their property and the destruction of their gas works, paid said sums of money under protest; that the same were not legally due, said amounts being as follows, to wit:

For September,	1862,		paid	January	24,	1863,	$1,836	90
" October,	"	$1,977 84						
" November,	"	2,180 00						
" December,	"	2,362 62						
			paid	February	14,	1863,	6,520	46
" January,	1863,	"	"	March	23,	"	2,773	62
" February,	"	"	"	April	21,	"	2,405	75
" March,	"	"	"	May	27,	"	2,420	31
" April,	"	"	"	June	17,	"	2,032	42
" May,	"	"	"	July	23,	"	1,678	01
" June,	"	"	"	Sept.	15,	"	1,371	57
						Total,	$19,202	14

The plaintiffs insist that the gas used in the public lamps of said city is not liable to taxation under the laws of the United States, and that therefore said sums of money ought to be recovered back again from the defendant, on the part of whom it is contended that he was legally entitled to collect the same. Upon the trial, the learned Court instructed the jury to find for the defendant, which they did; and to the judgment entered on said verdict, the plaintiff sued out this writ of error.

Brief of Argument.

The first and second assignments of error are because the Court declined to charge the jury, that if they believed the evidence in the cause and that the money sought to be recovered back had been paid by the plaintiffs under duress or threats of distress, their verdicts should be for the plaintiffs.

The Court below were requested to charge the jury:

I. That if the jury believed the evidence in the cause, they might find a verdict for plaintiffs for the amount claimed.

II. That if the jury believed that the plaintiffs paid to defendant the sums claimed in this case under protest and under duress of threats of seizure of their property, they were entitled to recover back the sums so paid.

III. That the provisions of the acts of Congress, imposing a tax on gas, did not apply to gas manufactured and used by the municipal corporation plaintiffs for public lamps under their corporate duty to light the public highways of the City of Philadelphia.

IV. That if the jury believed from the evidence that the gas on which the taxes had been paid to the defendant under protest was not manufactured or made and sold, or removed

for consumption or for delivery to others than agents for plaintiffs, the plaintiffs were entitled to recover back the taxes so paid.

V. That if the jury believed from the evidence that the gas on which the taxes had been paid to the defendant under protest was manufactured by the plaintiffs, "not for sale, but for their own use and consumption," the plaintiffs were entitled to recover back the taxes so paid.

The jury should have been instructed that if they believed the defendant had no right to insist on the payment of the tax, they could find for the plaintiffs. The case should not have been left liable to prejudice, from apparent lack of due resistance to an unlawful demand. The demandant was clothed with most extraordinary powers. On the instant his mandate would have sadly inconvenienced a population of six hundred thousand souls, and at a forced sale, immense sacrifice would have occurred to the property of a great city.

There can be no doubt that the danger threatened constituted that duress which will sustain this action.

"Threats to execute a power of sale, unless money not "demandable is paid, constitute duress." *Close* vs. *Phipps*, XLIX., E. C. L. R., 585; 8 M. & G., 586.

The third assignment of error raised the question as to whether the acts of Congress imposing duties on manufacturers apply to gas manufactured and used in the public street lamps of the City of Philadelphia.

The 75th section of the act of July 1st, 1862, provides that upon illuminating gas "produced *and* sold, or manufactured "or made *and* sold, or removed for consumption, or for "delivery *to others than agents* of the *manufacturer* or *pro-* "*ducer*," there shall be levied and collected a tax of 5 cents per thousand cubic feet. *Brightly's U. S. Dig., suppl., p.* 1373, *sections* 205–6; *Stat. at Large of* 1862, *p.* 462.

The section goes on to prescribe the manner in which the product "of any gas company" may be rated, &c., repeating

the term "gas company" several times, instead of the words "manufacturer or producer," as above.

The 33d section of the act of March 3, 1863, extends the provisions of the act of 1862 to all "*producers*" of the articles enumerated in the latter act. *U. S. Stat. at Large*, 1862–3, *p.* 729, *sec.* 33.

It is insisted that neither of these sections comprehend the taxing of gas produced by a municipal corporation for public use.

Taxing statutes are to be strictly construed. "Laws "imposing duties are never construed beyond the natural "import of the language: and duties are never imposed "upon the citizens on doubtful interpretations: for every "duty imposes a burden upon the public at large and is con- "strued strictly and must be made out in a clear and "determinate manner from the language of the statute." Story, J.—*Adams* vs. *Bancroft*, 3 *Sumn.* 386. *Sedgwick's Stat. Law*, *p.* 335.

Applying these principles to the interpretation of the Acts of Congress brought in question, it would seem quite clear that the manufacturers or producers of gas, subject to taxation, must be private individuals, or private corporations. Those persons or firms who pursue the business of making gas as a source of profit—the tithe of which should be contributed for the support of the Government.

Nowhere in the law is it provided that a city, or town, or State, engaged in the manufacture of taxable articles, shall pay a tax; for no city or State is known to be in the exercise of aught but municipal functions and those for the public good—not for pecuniary aggrandizement. Almost universally, cities and towns are supplied with gas made by private capitalists—individually, or associated together in companies —and, of course, the income derived by them from their investments should and of right ought to be taxed.

Perhaps no city in the world is so peculiarly situated with regard to her sources of street illumination as Philadelphia. The gas used by her citizens is made under the

direction of and by an especial department of the municipal government. The Trustees of her Gas Works are chosen at stated periods by the City Councils (the *Legislative department*), who also appropriate the means wherewith to buy the material out of which the gas is made—the pipes and lamps through which it is used—and the wages of all employees necessarily engaged. How marked the difference between this system and that pursued in other cities, and hence the necessary exception in her case with regard to these disputed Acts of Congress.

These Acts of Congress were made for the purpose of taxing the revenues and the incomes of the country. Personal industry and private enterprise were to receive additional burdens. Nowhere does it appear that subsidies were to be levied upon States, or towns, or that any business but that which was netting a profit should pay a tax. These facts are evident from the very titles of the Acts themselves, and from their whole reading and import. Land itself was not to be taxed, but its products in kind and specie. The manufacturer was not to pay for the amount of his stock, nor for his accumulation of raw material, but for the results of his skill and labor from which he gets wealth. The principle was taxation of whatever paid an income, and that which fell short of this end could not be charged. This is the true and evident import of these Acts of Congress, and no other theory can be substituted consistently with the manifest design of the National Legislature. Therefore, the City of Philadelphia can in nowise be taxed for the manufacture of any thing but that from which she derives an income, *or an accumulation of the sources of income.*

But there is another reason why these Acts of Congress should be construed strictly:

"Statutes authorizing summary judicial proceedings, and "by which extraordinary powers are given to courts or offi- "cers of justice, are to be strictly construed."

Sedgwick on Stat. Law, p. 347.

Citing *Lord Kenyon in Davison* vs. *Gile*, 1 *East*, 64.

Now—

Section 35 of the Act of July 1, 1862, authorizes the distress and sale of goods and chattels, for income tax, if not paid within ten days after demand, and the only exemptions given are "the tools or implements of a trade or profession, "one cow, arms and provisions and household furniture kept "for use, and apparel necessary for a family."

U. S. Stat. at Large, 1861–2, p. 439, 440.

If these Acts in question are not to be strictly construed, how is it possible to give a rational interpretation to Section 35?

Again—

"The English Acts imposing Stamp Duties are to be construed strictly."

Sedg. Stat. Law, p. 358.

Citing *Tompkins* vs. *Ashby*, 6 *B. & C.* 541.
Warrington vs. *Furbor*, 8 *East*, 242.
Dwarris, 646.

The term gas company, as used in the Act of Congress, does not necessarily imply a municipal corporation like the City of Philadelphia, which manufactures its own gas for street lamps without profit.

2 *B. & Adol*, 793.
Mayor vs. *Allair*, 14 *Ala.*, 403.
Prigg vs. *Com.*, 16 *Peters*, 548.
Mott vs. *The R. R.*, 6 Cas. 20.
Fisher vs. *Harrisburg City*, 2 *Grant*, 295.
Taylor vs. *Board of Health*, 7 *Cas.*, 75.

If any doubt should exist as to the true construction of the 75th section of the Act, it is removed by the clear and express language of the 73d section of the same Act, which ought to be considered *in pari materia* with the section almost immediately following it.

§ 73. "All goods, wares and merchandise, or articles manufactured or made by any person or persons, *not for sale, but for his, her or their own use or consumption*, and all goods, wares and merchandise, or articles manufactured or made and sold, except spirituous and malt liquors, and manufactured tobacco, where the annual product shall not exceed the sum of six hundred dollars, shall be and are exempt from duty: *Provided*, That this shall not apply to any business or transaction where one party furnishes the materials, or any part thereof, and employs another party to manufacture, make or furnish the goods, wares and merchandise or articles, paying or promising to pay therefor, and receiving the goods, wares and merchandise or articles."

Br. U. S. Dig., sup., p. 1373, *sec.* 203.
Stat. at Large, 186, *p.* 462.

This section expressly exempts, *first*, "all articles manufactured or made, by any person or persons, *not for sale*, but for *his, her or their own use and consumption;*" and, *second*, "all articles manufactured or made *and sold*," "when the annual product shall not exceed the sum of six hundred dollars" (liquors and tobacco exempt).

The first clause of this section, in terms, expressly includes the case now before the Court. The gas manufactured by the City of Philadelphia, upon which the tax in question was paid, was made, *not for sale*, "but for the City's own use and consumption." We confidently submit to the Court that the language of the 73d section is too plain and precise to admit of any constructions inconsistent with the view here respectfully presented.

RICHARD LUDLOW,
WILLIAM L. HIRST,
F. CARROLL BREWSTER,
Attorneys for Plaintiff in Error.

In the Supreme Court of the United States.

DECEMBER TERM, 1866.

CITY OF PHILADELPHIA, plaintiff in error,
vs.
JOHN H. DIEHL, defendant in error.
} No. 154.

THE CASE.

This is a writ of error to a judgment of the circuit court of the United States for the eastern district of Pennsylvania, in an action of assumpsit brought by the city of Philadelphia to recover certain moneys, amounting to $26,875 57, paid under protest to the defendant, as collector of internal revenue, for duties upon illuminating gas manufactured and furnished by the trustees of the Philadelphia Gas-Works and consumed by the city in her public lamps during the last four months of the year 1862, and the first six months of the year 1863. The action was brought in the district court for the city of Philadelphia on October 31, 1863, (Rec., p. 4,) and removed by *certiorari* on November 25, into the circuit court of the United States, under the 3d section of the act of March 2, 1833. On the trial of the cause the plaintiff requested the court to give sundry instructions to the jury to the effect that gas furnished to the city of Philadelphia and consumed in her public lamps was not liable to duty, as claimed by the government, under the internal revenue act of July, 1, 1862, and the supplement thereto of March 3, 1863. The court declined to charge the jury as requested by the plaintiff, and instructed them that the

tax was properly assessed, and that it was the duty of the jury to find a verdict for the defendant. The plaintiff thereupon excepted. The jury rendered a verdict for defendant on October 4, 1864, on which the court entered judgment. (Rec., p. 7.)

THE FACTS.

1. This suit results from a claim made by the city of Philadelphia, that under the act of July 1, 1862, and its supplement of March 3, 1863, the gas manufactured by the trustees of the Philadelphia Gas-Works and furnished to and used in the public street lamps of the city was exempt from the duty prescribed in section 75 of the first-named act. The collector, defendant, having threatened to collect by distraint the amount of tax assessed upon that gas, the city paid the same under protest, and brought this suit to recover it back.

2. The 75th section of the act of July 1, 1862, provided, that upon the goods, wares, and merchandise therein mentioned, and thereafter produced and sold, or manufactured, or made and sold, or removed for consumption, or for delivery to others than agents of the manufacturer or producer, there should be levied, collected, and paid certain duties, to be paid by the producer or manufacturer thereof, that is to say, *inter alia*, "on gas illuminating, made of coal, wholly or in part, or any other material, when the product shall be not above five hundred thousand cubic feet per month, five cents per one thousand cubic feet, &c.; and where any gas company shall not have been in operation for the year next preceding the return as aforesaid, then the rate shall be regulated on the estimated average of the monthly product: *Provided* That the product required to be returned shall be the product charged in the bills actually rendered by any gas company during the month preceding the return, and all gas companies are authorized to add the duty or tax imposed by this act to the price per thousand cubic feet on the gas sold: *Provided further*, That all gas furnished for lighting street lamps, and not measured, and all gas made for and used by any hotel, inn, tavern,

and private dwelling, shall be subject to duty, and may be estimated," &c.

(12 Stats., 462, 463.)

The 33d section of the supplemental act of March 3, 1863, extended the provisions of the act of 1862 to all "*producers*" of the articles mentioned in that statute. (12 Stats., 729.)

3. The gas consumed in the public lamps of the city of Philadelphia is manufactured at the Philadelphia Gas-Works, and payment is made therefor by the municipality to the trustees of the works. (See testimony of Mr. Murta, Rec., p. 9.)

These Gas-Works originated in an attempt by the legislative department of the city government to create a *quasi* corporation by an ordinance passed March 21, 1835. (Rec., p. 11.) The works were constructed by means of money subscribed by private individuals, for which they received certificates of stock entitling them to the profits arising from the manufacture and sale of gas. The ordinance of 1835 provided that the works should be under the exclusive control and management of twelve trustees elected by the Select and Common Councils of the city. It also provided that the public lamps should be supplied at one-half the price paid by private consumers. (Rec., p. 13.) The original capital was limited to $100,000; and to increase the means necessary for the extension of the works subsequent ordinances were passed authorizing loans, and providing that the money should be borrowed by the city, on the requisition of the trustees, and that city certificates should be issued to the loanholders. A sinking fund was created out of the proceeds of sale of gas before any profits were distributable to the stockholders, as security for the loanholders. The interest on the certificates of loan was declared payable at the office of the Gas-Works. (Rec., pp. 14, 15.) The original ordinance of 1835 having reserved to the city the right to take possession of the Gas-Works, an ordinance of January 14, 1841 provided that on March 1, 1841, the city should take possession of them in their own right, and that the stock should be converted into a loan. (Rec., p. 19.) Possession was taken by the city.

But the Works were continued by the ordinance of 1841, under the direction and superintendence of the existing trustees. The only change in the relation of the trustees was that they thenceforth were trustees for the city and the loanholders, not the stockholders. Several ordinances were subsequently passed, authorizing further loans. They stipulated that, for the further security of the loanholders, the Works should be controlled and managed by a board of trustees, elected and constituted as theretofore, who should have the whole control of the works, and of all the funds belonging to them; and that the trustees should pay no part of the funds, nor any of the profits of the works, into the city treasury, but should apply the same in payment of the interest and principal of the loans. (Rec., p. 21; ordin. of June 17, 1841, sec. 3.) The supreme court of Pennsylvania have said that the "primary design of this stipulation was to keep the pledge entirely out of the hands of the borrowers, (the city,) and prevent the funds from being intermingled with other property of the city, and thus exposed to the hazards of expenditure for other objects than those to which it was exclusively designated." (Western Saving Fund *v.* The City of Philadelphia, 7 Casey, 190.)

Several ordinances specifically provide for the price payable for gas supplied to the public lamps. (Rec., pp. 23, 24, 28, 29.)

The supreme court of Pennsylvania by injunction restrained the city, at the instance of loanholders, (1,) from taking the property and effects, entrusted to the trustees under the various ordinances, out of their hands. And (2) from interfering with the twelve trustees by electing others in addition to the number provided by the original ordinance of 1835. (See Western Saving Fund Society *v.* The City of Philadelphia, 7 Casey 178, 185.)

THE LAW.

I. It is evident from the foregoing statement of the facts disclosed by this record, that the two propositions contained in

the prayer for instruction presented by the United States Attorney to the court below, and which the court affirmed in its charge to the jury, are strictly correct:

1. That all illuminating gas manufactured or made, and sold or furnished by the trustees of the Philadelphia gas-works, created and constituted as said trustees are, by the several laws and ordinances given in evidence in relation thereto, was liable to tax under the act of July 1, 1862, and March 3, 1863, whether said gas was furnished to and consumed by private consumers or was furnished to and consumed by the city of Philadelphia in her public lamps, at the rates fixed by said trustees, and regulated by the ordinances which require said trustees to furnish gas for consumption in the public lamps, &c., at half the rates charged to private consumers.

2. That the trustees of the said Philadelphia gas-works, by the laws and ordinances creating and constituting them a *quasi* corporation, and by reason of the several loans created for the support and management of the said gas-works, hold such a relation to the private consumers, the loanholder, and the city of Philadelphia, that all illuminating gas manufactured or made, or sold, or furnished by them to private consumers, or to the city of Philadelphia, to be used in public lamps, was liable to and chargeable with the tax imposed by the acts of July 1, 1862, and March 3, 1863.

If the 75th section of the act of 1862 levies duty only upon articles made and sold, and exempts therefrom all articles made and consumed or used by the manufacturers, it is clear that the city obtains the gas used in her public lamps by actual *purchase* from the trustees of the gas-works, and that every cubic foot of gas furnished by those works and used for public lighting in Philadelphia is actually and in fact *sold* by the trustees, on account of the persons beneficially interested in the profits of the works, to the city of Philadelphia. The moneys paid for gas by the city councils to the trustees are a portino of the revenue of the works—a part of the trust fund—appropriated and pledged by unchangeable and inviolable contract, as the highest court of the State has determined, for

the security of the loanholders. The trustees could not make a free gift of the gas to the city, nor could the city withhold the payment of any debt that she may owe for gas. She is the owner of the works, subject to the paramount rights of the loanholders. If she thinks that by a more economical management the price of gas might be reduced, without violating the provisions of the contract with the loanholders, she may file a bill for an account, and ask for the direction of a court on the question. But independently of her judicial remedy, she has no power to withdraw any portion of the revenue of the works from the trust fund. Several of these propositions have been adjudged in terms by the Supreme Court; others are directly involved in the decisions of that tribunal, to which reference has been made. (7 Casey, 184.

II. It is unnecessary to consider the question whether the city would be liable, under the act of 1862, if the manufacture o the gas used in the public lamps were conducted by agents holding no relations towards any but the city, and through agencies in which there were no interests save those of the municipality, for the reason that *quoad* the purchase of that gas she stands on precisely the same footing as private consumers, under the contract between herself and the loanholders. But it nevertheless seems to be clear, under the *second proviso* of the clause of the 75th section of the act relating to the tax on gas, that all gas furnished for lighting street lamps, whether made by the city or town, or by private individuals or companies engaged in the business of manufacturing illuminating gas, is liable to duty. (12 Stats., 463.)

III. It is abundantly clear, on the whole, that the learned circuit court correctly refused to charge the jury as requested by the plaintiff, and that the judgment of the court should be affirmed.

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